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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

. . . . .  
BARBARA E. VARNER, . CIVIL ACTION  
Plaintiff .  
vs. . NO: 1:CV 01-0725  
COMMONWEALTH OF PENNSYLVANIA, .  
NINTH JUDICIAL DISTRICT, .  
CUMBERLAND COUNTY; .  
CUMBERLAND COUNTY; S. GARETH .  
GRAHAM, individually; and .  
JOSEPH OSENKARSKI, .  
individually, .  
Defendants .  
. . . . .  
.

Deposition of: DAVID W. DeLUCE  
Taken by : Plaintiff  
Date : October 24, 2003, 10:42  
a.m.  
Place : 5001 Louise Drive  
Mechanicsburg,  
Pennsylvania 17  
Before : Ann M. Wetmore  
Reporter - Notary Public

23

24

25

1 APPEARANCES:

2 LAW OFFICES OF DEBRA K. WALLET  
By: DEBRA K. WALLET, ESQ.

3  
For - Plaintiff

4  
ADMINISTRATIVE OFFICE OF  
5 PENNSYLVANIA COURTS  
SUPREME COURT OF PENNSYLVANIA  
6 By: A. TAYLOR WILLIAMS, ESQ.

7 For - Defendant Ninth Judicial District

8 THOMAS, THOMAS & HAFFER  
By: JAMES K. THOMAS, II, ESQ.  
9 PAUL J. DELLASEGA, ESQ.

10 For - Defendant Cumberland County

11 MONTGOMERY, McCRACKEN, WALKER & RHOADS, LLP  
By: DAVID J. MacMAIN, ESQ.

12  
For - Defendant Gary Graham

13  
SWEENEY & SHEEHAN, P.C.  
14 By: PAUL LANCASTER ADAMS, ESQ.

15 For - Defendant Joseph Osenkarski

16 ALSO PRESENT:

17 PETER ZANGARDI, ST. PAUL INSURANCE CO.  
BARBARA VARNER  
18 GARY GRAHAM  
JOSEPH OSENKARSKI

19

20

21

22

23

24



1

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WITNESS

2

Examination

3

DAVID DeLUCE

4

By Ms. Wallet

4

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By Mr. MacMain

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By Mr. Adams

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By Ms. Williams

-

8

By Mr. Thomas

-

9

By Mr. Dellasega

-

10

11

EXHIBITS

12

DeLuce Deposition

Exhibit\_Number

Page

13

1 Handwritten notes authored by

4

14

David W. DeLuce and fax cover  
Sheet dated October 22, 2003

15

2 Confidential Attorney Impressions

4

16

Memorandum to HAJ from DWD,  
dated April 30, 1997

17

3 Confidential Attorney Impressions

4

18 Memorandum to HAJ from DWD,  
dated June 4, 1997

19

4 Letter to Daniel Hartnett from

11

20 Horace Johnson, dated June 26, 1997

21

5 Handwritten Memo to Dan from Joe O.

121

dated April 30, 1997, with case

22

assignments

23

24

25

2           It is hereby stipulated by and between  
3           counsel for the respective parties that  
sealing,  
4           certification and filing are hereby waived;  
and  
5           all objections except as to the form of the  
6           question are reserved to the time of trial.  
7           (DeLuce Deposition Exhibits #1, #2 and #3  
8           marked for identification)

9                   DAVID W. DeLUCE, called as a witness,  
being  
10                  duly sworn, testified as follows:

11 EXAMINATION

12 BY MS. WALLET:

13 Q. Good morning, Mr. DeLuce, my name is Debra  
Wallet.

14 I'm here representing Barbara Varner in an  
action

15           that has been brought against the county, the  
16           court and two individuals. Before I begin my  
17           questioning of you, I'd like to get some  
matters

18 on the record if I may.

19 I've had the court reporter mark for me as  
20 DeLuce Deposition Exhibit Number 1 a multiple-

page

21 document. The first page is an October 22,  
2003,

22 fax cover sheet memo/letter from Paul Dellasega  
to

23 counsel. "Please find enclosed a copy of notes  
24 offered by David W. DeLuce, Esquire, which

Judge

25 Kane ordered be produced." And attached to  
that



Exam./Wallet - DeLuce

5 1 document are I believe some -- it's hard to  
2 tell -- 37 pages perhaps. I can't tell because  
3 some of this came over the fax twice so it may  
be  
4 that I have some additional things two times.

5 Before we move off DeLuce Deposition  
Exhibit

6 Number 1, I'd like counsel for the County to  
7 examine this document and tell me whether it  
8 accurately reflects what you have in your file  
as  
9 far as the notes for David DeLuce; and,  
second,  
10 why it appears that there are some notes  
contained  
11 in that package that were identified previously  
as  
12 notes from Judge Hoffer.

13 MR. THOMAS: Jim Thomas on behalf of the  
14 County and I will respond. And actually,  
Deb,  
15 before I respond to your request in that  
regard,  
16 let me indicate for the record that we are  
17 producing Mr. DeLuce here today for

deposition

18           pursuant to Judge Kane's order on your motion  
to

19           compel production of documents and the  
deposition

20           of Dave DeLuce, which memorandum and order was  
21           dated September 25, 2003.

22           While we've read that opinion and order  
and

23           have produced him, perhaps out of a sense of  
24           excess caution, I'd like you to agree that we  
have

25           a continuing objection. We continue to  
believe,

Exam./Wallet - DeLuce

6 1 with all due respect, that Judge Kane is  
incorrect  
2 in her ruling in this matter. I'd like your  
3 agreement that we have a continuing objection  
to  
4 any and all questions that are asked today on  
the  
5 basis that we oppose Mr. DeLuce and in general  
but  
6 not exclusively on the basis of attorney client  
7 privilege and attorney work product. Can we  
have  
8 that agreement?

9 MS. WALLET: I will be happy to agree so  
long  
10 as you state specifically the nature of your  
11 objections today.

12 MR. THOMAS: Well, the nature of our  
13 objections is that Mr. DeLuce in general I  
would  
14 rely on the briefing which was done, but in  
15 general Mr. DeLuce was hired as an attorney,  
16 worked as an attorney on behalf of the County  
to  
17 gather information and facts and made certain

18            recommendations and rendered legal opinions  
19            included in those recommendations to the  
County.

20                        We believe that much of his communication  
was

21            entitled to be protected because it was  
22            communications to and on behalf of a client.

We

23            believe much of what you will make inquiry into  
24            today was, in fact, attorney work product.

That's

25            the general nature of the objection.

Exam./Wallet - DeLuce

7 1 MS. WALLET: So, you are raising today as  
a  
2 continuing objection two bases, attorney  
client  
3 privilege and attorney work product.

4 MR. THOMAS: Yes. And I assume we will  
have  
5 the usual stipulations with respect to other  
6 objections?

7 MS. WALLET: And that being that  
everything  
8 say for the objection as to the form of the  
9 question will be preserved until later?

10 MR. THOMAS: Correct. Do we have such an  
11 agreement?

12 MS. WALLET: We certainly have an  
agreement  
13 that all objections except as to the form of  
the  
14 question will be preserved. We have an  
agreement

15 that you continue to believe that all of the  
16 testimony of Mr. DeLuce is subject to attorney  
17 client privilege and attorney work product,  
that

18           and that alone.

19                   MR. THOMAS: And you agree that I don't  
have

20           to object to every question, that we will have  
a

21           standing objection to the questions and  
inquiry

22           today on that basis. Fair?

23                   MS. WALLET: That's correct.

24                   MR. THOMAS: All right. With respect to  
your

25           inquiry with respect to what has been marked as

Exam./Wallet - DeLuce

8 1 DeLuce Number 1, these do represent the notes  
2 prepared by Mr. DeLuce as part of his  
3 investigation. They also include notes that  
were  
4 apparently prepared by Judge Hoffer and out of  
a  
5 sense of being complete we have produced both  
for  
6 you. Certainly this witness can identify for  
you  
7 today those notes which are in his handwriting  
and  
8 those which are not.

9 MS. WALLET: Do you believe that the  
package  
10 that we've marked as Deposition Exhibit Number  
11  
11 is a complete package of all of the notes that  
12 exist, were in the care and custody of David  
13 DeLuce prior to being turned over to your  
office?

14 MR. THOMAS: We do with the exception of  
15 Judge Hoffer's notes. I don't know that the  
notes  
16 of Judge Hoffer were in Mr. DeLuce's

possession.

17 In fact, I believe they were not.

18 MS. WALLET: Okay.

19 MR. THOMAS: Okay.

20 MS. WALLET: Now we've marked as

Deposition

21 Exhibit Number 2 what has been produced by  
your

22 office as being the investigative report of  
David

23 W. DeLuce. I would like you to look at this  
24 package and tell me whether you believe this to  
be

25 the report prepared by Mr. DeLuce and tell me



Exam./Wallet - DeLuce

9 1 whether or not this is some draft or a version,  
2 what the nature of this report is.

3 MR. THOMAS: This is a report that  
contains a

4 date of April 30, 1997. The document which has  
5 been referred to the Court as the DeLuce  
report

6 was an evolutionary document. This  
investigation

7 took a substantial amount of time. It  
involved

8 the interview of numerous witnesses,  
significant

9 legal research and compilation of the facts  
10 compares to the law, in addition to certain  
11 recommendations or impressions with respect to  
Mr.

12 DeLuce.

13 The document evolved over time as I noted.  
14 This is a version which I would note while  
15 containing a date of April 30, a close review  
will

16 reflect it was obviously not prepared on April  
30

17 because it makes reference to certain events

that

18           occurred in May within the context of the  
report.

19           This was the report that was in our possession  
and

20           was subject of the motion practice before Judge  
21           Kane and is the one that was produced.

22           As part of the preparation of Mr. DeLuce  
for

23           this deposition yesterday, because of our  
24           discussions -- and let me add was the report in  
25           the possession of Mr. DeLuce and that's the  
reason

Exam./Wallet - DeLuce

10 1 it was produced. As part of deposition  
2 preparation yesterday, I perhaps out of a sense  
of  
3 caution, there were certain things that I'm  
4 obviously not going to reveal here today that  
led  
5 me to believe there may be another version,  
later  
6 version of this evolving document. As a  
result, I  
7 called Taylor, counsel for the Court, asked her  
to  
8 look at the copy of this report that was  
contained  
9 in her files which would have been obtained  
from  
10 the Court. I at that time determined that  
there  
11 was, in fact, a later report I believe dated  
June  
12 7.

13 MS. WILLIAMS: 4.

14 MR. THOMAS: June 4. That report was then  
15 produced for you yesterday by Taylor prior to  
the

16 commencement of this deposition.

17 MS. WALLET: Mr. Thomas, is what has been  
18 marked as Deposition Number 2 what was produced  
19 to  
20 Judge Kane as a result of your order that you  
21 produced these documents in camera?

22 MR. THOMAS: It was.

23 MS. WALLET: And did you produce what has  
24 been marked as Deposition Exhibit 1 to Judge  
25 Kane  
in camera?

MR. THOMAS: It was. Well, let me put a

Exam./Wallet - DeLuce

11 1 caveat on that. I'm not certain at this moment  
2 without comparing them page by page whether the  
3 documents that were produced for Judge Kane  
4 included or excluded the notes that are Judge  
5 Hoffer's notes, that appear to be Judge  
Hoffer's  
6 notes.

7 MS. WALLET: Did you produce for Judge  
Kane  
8 in camera other than Deposition 1 or Deposition  
2?

9 MR. THOMAS: We did produce for the judge  
the  
10 letter which has generally been referred to as  
the  
11 Johnson letter to the County also.

12 MS. WALLET: Let the record show that I'll  
13 hand to Mr. Thomas a letter dated June 26,  
1997,  
14 from Horace A. Johnson to Daniel J. Hartnett.  
15 Would that be the letter to which you just  
16 referred?

17 MR. THOMAS: It appears to be.

18 MS. WALLET: And did it include the  
19 documents, four pages attached to this

letter?

20 MR. THOMAS: Yes, I believe so.

21 MS. WALLET: Let's mark that for  
22 identification as Deposition Exhibit Number  
4.

23 (DeLuce Deposition Exhibit #4 marked  
for  
24 identification)

25 MS. WALLET: So, if I understand  
correctly,

Exam./Wallet - DeLuce

12 1 Deposition Exhibits 1, 2 and 4 were produced to  
2 Judge Kane for her examination in camera?

3 MR. THOMAS: Give me the numbers again.

4 MS. WALLET: 1, 2 and 4.

5 MR. THOMAS: Correct.

6 MS. WALLET: To the best of your  
knowledge,

7 was anything else produced for the judge?

8 MR. THOMAS: No.

9 MS. WALLET: And I understand your  
10 clarification with regard to Deposition Exhibit  
11 1,

12 you are not certain whether it included the  
Hoffer

13 notes as well?

14 MR. THOMAS: That's correct.

15 MS. WALLET: Now let me hand you what  
we've

16 marked as Deposition Exhibit 3. This is the  
one

17 that was received by me by fax late yesterday  
afternoon.

18 MR. THOMAS: This is the document I made  
19 reference to we learned of its existence, it  
was

20 not contained in Mr. DeLuce's file, we learned  
21 of

22 its existence late yesterday and it was  
23 produced

24 following the deposition preparation to all  
25 counsel.

MS. WALLET: To the best of your  
knowledge,

have you produced for me in response to the



Exam./Wallet - DeLuce

13 1 judge's order all of the investigative  
documents

2 created or used by David DeLuce as part of his  
3 investigation of the complaints made by Barbara  
4 Varner?

5 MR. THOMAS: We believe that we have  
complied

6 with the court's order and produced those  
7 documents which have been ordered produced. In  
8 fact, arguably we may have gone beyond the  
9 requirements of the court order in terms of  
10 documents produced. To our knowledge, we  
believe

11 that we've produced the DeLuce investigative  
12 materials in accordance with the court's  
ruling.

13 MS. WALLET: Thank you, Mr. Thomas.

14 MR. THOMAS: You're welcome.

15 MR. ADAMS: Off the record.

16 (Discussion held off the record)

17 MR. ADAMS: Mr. Adams on behalf of Mr.  
18 Osenkarski. I just want to put on the record  
that

19 the agreement between plaintiff's counsel and  
20 County counsel is that of those two parties in

21 terms of waiving the objections except for that  
22 of

23 form, there's been some evidence through this  
24 litigation that has included items that may  
25 warrant objections beyond objections simply  
just

for form, that of conclusions of law,

Exam./Wallet - DeLuce

14 1 mischaracterizations, and questions that may be  
2 designed to have a witness speculate and, so,  
3 therefore, Osenkarski has not waived objections  
4 for such things.

5 MR. THOMAS: Does that mean you intend to  
6 assert those objections today, Paul, or are  
you

7 simply making certain that the record is  
clear

8 that you're not waiving them?

9 MR. ADAMS: The second, the latter.

10 MR. THOMAS: Okay.

11 MR. MacMAIN: I'll join in that objection  
I

12 suppose.

13 MS. WILLIAMS: And I will join Paul's  
14 objections as well.

15 MS. WALLET: I'm still missing Deposition  
2.

16 MR. THOMAS: (Hanging)

17 MS. WALLET: Thank you, Mr. Thomas.

18 MR. THOMAS: You're welcome.

19 BY MS. WALLET:

20 Q. Mr. DeLuce, finally this is the opportunity for  
me

21 to ask you some questions regarding this  
lawsuit.

22 I will do my best inasmuch as this room is  
23 somewhat large to keep my voice up. May we  
please

24 have an agreement that if you would attempt to  
25 answer one of my questions you have at least  
heard

Exam./Wallet - DeLuce

15 1 that question?

2 A. Yes.

3 Q. And may we also have an agreement that if you  
4 attempt to answer my question you have

understood

5 that question, and if you do not understand it,  
6 you will ask for a clarification before you  
7 attempt to answer it?

8 A. Yes.

9 Q. Is there any reason, sir, physical or otherwise  
10 why you could not answer all of my questions  
11 truthfully today?

12 A. No reason.

13 Q. Where are you employed presently, sir?

14 A. I'm employed by the law firm of Johnson, Duffie  
15 Stewart and Weidner.

16 Q. And you are an attorney at law?

17 A. I am an attorney at law.

18 Q. How long have you been at your current law  
firm?

19 A. 18 years.

20 Q. Did you have prior employment after law school?

21 A. For one year I was a judicial law clerk at the  
22 York County Court of Common Pleas for Judge  
23 Buckingham.

24 Q. When did you graduate from law school?

25 A. In 1984.

Exam./Wallet - DeLuce

16 1 Q. Where did you get your law degree?

2 A. Widener University in Delaware.

3 Q. Did you have employment prior to law school but  
4 after undergraduate school?

5 A. Yes. I worked for two years for a company  
called

6 Grove Manufacturing in Shady Grove,  
Pennsylvania.

7 Q. What did you do for them?

8 A. I was a district manager in the field.

9 Q. What's the nature of their manufacturing  
10 operation?

11 A. They manufacture and sell hydraulic cranes.

12 Q. Where did you get your bachelor's degree?

13 A. Pennsylvania State University, University  
Park,

14 1979.

15 Q. In what field?

16 A. School of business, concentration in finance.

17 Q. Do you have any other advanced degrees other  
than

18 a law degree?

19 A. No, I do not.

20 Q. Did you have any other postgraduate training  
other

21           than what you've described?

22    A.     No, I do not.   You mean graduate from college?

23    Q.     Correct.

24    A.     No, I do not.

25    Q.     In your job with Grove Manufacturing, did you  
have



Exam./Wallet - DeLuce

17 1 any responsibilities for EEO  
compliance?

2 A. No, I did not.

3 Q. Describe briefly what your district manager job  
4 was.

5 A. Primarily manage a district with distributors.  
It  
6 was sales and service coordination. It was  
field.

7 I was located in the western United States. I  
had  
8 no employees under me.

9 Q. Describe the nature of your law practice for  
the  
10 past 18 years.

11 A. General practice of law. Initially probably  
more  
12 family law, criminal, civil litigation. It has  
13 evolved into health law, small business, labor  
and  
14 real estate.

15 Q. How long have you been doing work for the  
County  
16 of Cumberland?

17 MR. THOMAS: You mean him specifically or

the

18 law firm?

19 MS. WALLET: Him specifically.

20 A. I don't know for sure. My partner, Hank  
Johnson,

21 was the county solicitor I believe through  
1998.

22 At times during his term as solicitor I was  
used

23 as special counsel on certain matters. He  
became

24 a solicitor I believe in 1986, so it would have  
25 been during that time.

Exam./Wallet - DeLuce

18 1 BY MS. WALLET:

2 Q. What kind of work did you do for the county  
3 between 1986 and 1998?

4 A. I recall working on contract matters. I recall  
5 working on labor matters.

6 Q. Can you be more specific in the labor matter?

7 A. Personnel issues. I was consulted frequently  
by

8 the personnel director at the time. It might  
have

9 dealt with family medical leave, it might have  
10 dealt with Fair Labor Standards Act, it might  
have

11 dealt with other employment related issues.

12 Q. Which personnel directors have you worked  
directly

13 with?

14 A. Dan Hartnett, Dan Monkin.

15 Q. Anyone else?

16 A. No, no one else to my knowledge or my  
17 recollection.

18 Q. I thought you were struggling to remember  
another

19 name.

20 A. No, I'm not. I don't remember any other names.

21 Q. Mr. DeLuce, tell me how you first became  
aware

22 that Barbara Varner had filed a complaint  
or a

23 charge involving Gary Graham.

24 MR. THOMAS: Objection to the form. You  
may

25 answer.

Exam./Wallet - DeLuce

19 1 A. I was notified I believe by my  
partner, Hank

2 Johnson, that some type of complaint had been  
3 filed or had been made and that I was to  
4 communicate with Mr. Hartnett and assist him  
and

5 advise him in whatever way.

6 BY MS. WALLET:

7 Q. Was this a verbal communication with Mr.  
Johnson

8 or did you receive something in writing?

9 A. It was verbal.

10 Q. Do you recall when this was, sir?

11 A. I suspect based on reviewing the report that  
it

12 was in April of 1997, but I can't recall  
anything

13 more specific than that.

14 Q. Now, at that point in time your firm was the  
15 solicitor for the County of Cumberland?

16 A. Hank Johnson, Horace H. Johnson was the county  
17 solicitor. We were hired at times as  
special

18 counsel on various matters as were other  
law

19 firms.

20 Q. Do you know, sir, why the relationship between  
Mr.

21 Johnson as solicitor and the County of  
Cumberland

22 ended?

23 A. He resigned.

24 Q. To the best of your knowledge, sir, has your  
firm

25 had any responsibilities with regard to the  
County

Exam./Wallet - DeLuce

20 1 of Cumberland since Mr. Johnson  
resigned in 1998?

2 A. I believe there may have been a couple files  
that

3 had been opened during Mr. Johnson's tenure by  
our

4 firm that we continued until they were  
completed.

5 What they were, I have no recollection.

6 Q. Did you engage in any professional relationship  
7 with the county after 1998?

8 A. If there were any open files that I was  
handling,

9 yes. I have no present recollection of what  
they

10 are.

11 Q. Did you continue to be engaged as labor counsel  
12 after 1998?

13 A. No, unless there was a file already opened and  
I

14 was already working on it prior to that time.

15 Q. Sir, have you had any special training in sex  
16 discrimination cases?

17 MR. THOMAS: Objection to the form. You  
may

18           answer if you understand. I'm not sure what  
19           you

20           mean by special training.

21       A.     I have spent or did spend and continue to spend  
22           time going to seminars and training sessions on  
23           the legal topic. Continuing legal education is  
24           probably the best way to sum it up on a regular  
25           basis.

26       BY MS. WALLET:



Exam./Wallet - DeLuce

21 1 Q. And did that occur both before and  
after 1997?

2 A. Yes.

3 Q. Can you tell me what training you received  
before

4 1997?

5 A. On the job by working on cases that came into  
our

6 firm with another attorney of our firm as well  
as

7 attending seminars. I cannot be anymore  
specific

8 because I have no recollection.

9 Q. So, Mr. Johnson came to you and asked you to be  
in

10 contact with someone at the county?

11 A. That's my recollection.

12 Q. What did he tell you about the nature of the  
13 complaint at that time?

14 A. I don't recall him giving me any specifics. I  
15 recall him telling me to contact Mr. Hartnett  
to

16 get information.

17 Q. Did anyone else in your firm at that time do  
any

18 of the labor or employment work for the county?

19 A. Not that I can recall.

20 Q. So, if it was a labor problem it got referred  
to

21 you?

22 A. Yes, if the county wanted us to do it.

23 Q. Did Mr. Johnson do some of that work himself?

24 A. I don't know.

25 Q. Is there anyone else in the firm who did work  
for

Exam./Wallet - DeLuce

22 1 the County of Cumberland other than  
you and Mr.

2 Johnson?

3 A. Yes.

4 Q. Who was that?

5 A. I am not certain exactly who. I know that Roy  
6 Weidner did. I know that James Johnson did.

7 There may have been others, I can't recall,  
it's

8 been six or seven years ago.

9 Q. Did Mr. Johnson tell you why he picked you for  
10 this particular assignment?

11 A. No.

12 Q. Did you ask?

13 A. No.

14 Q. What did you do as a response to Mr. Johnson's  
15 assignment?

16 A. My recollection is that I contacted Mr.  
Hartnett

17 and asked him what he knew.

18 Q. What did he tell you?

19 A. I have no present recollection of what he told  
me

20 other than to say that an employee in the  
21 probation department had complained about some

22 form of sexual harassment.

23 Q. What did Mr. Hartnett ask you to do?

24 A. He wanted a recommendation as to what the  
county

25 should do.

Exam./Wallet - DeLuce

23 1 Q. Did you speak with him on the phone  
or in person?

2 A. I'm sure initially I spoke to him on the phone  
and

3 I also know that I discussed the situation with  
4 Mr. Johnson because of the unique nature of the  
5 probation department.

6 Q. And what do you mean by that, sir?

7 A. Well, they both pointed out to me, as I recall,  
8 that the probation department is under the  
control

9 of the president judge and not the county.  
10 Therefore, the first issue was what would be  
our  
11 role.

12 Q. Who first raised that issue?

13 A. I believe it was Hank Johnson, that's my  
14 recollection.

15 Q. Now, if I might ask you, sir, to take a look at  
16 what we have marked as DeLuce Deposition Number  
17 1.

18 Can you identify for us which of that package  
19 constitutes notes in your handwriting?

20 A. It looks like mine start on Page 5 of 37 at the  
top of the fax and continue -- well, it looks

like

21           it's 5 of 37 through to 37 of 37, and then

behind

22           that it looks like 24 more pages and that does

23           appear to be my handwriting.

24    Q.    Did you keep any notes, sir, of any of your

25           telephone conversations with Dan Hartnett or

any

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24 1 other individuals at the county?

2 A. No.

3 Q. Did you take notes but they are no longer  
4 available or you just didn't take any notes?

5 A. I did not take any notes of our phone  
6 conversations to my recollection.

7 Q. Describe for me what your file for this matter  
8 looked like.

9 A. Legal research was a large part of it, my notes  
10 of

11 meetings with witnesses that were interviewed  
12 by

13 Mr. Hartnett and myself, I'm sure there were  
14 some

15 correspondence. The file also contains  
16 documents

17 from the EEOC, Thomas, Thomas & Hafer and the  
18 federal lawsuit.

19 Q. Do I understand, sir, you no longer have that  
in  
your possession?

A. A complete copy of my file was provided to  
counsel. I still have my file.

Q. Do you have the originals or does counsel have  
the

20 originals?

21 A. I have the originals.

22 Q. Did you bring those with you today?

23 A. No, I did not.

24 Q. When you say counsel, could you be specific?

We

25 have a lot of lawyers here.



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25 1 A. Counsel for the County who is here  
with me today,

2 Thomas, Thomas & Hafer.

3 Q. And that would Mr. Thomas and Mr. Dellasega?

4 A. Mr. Thomas and Mr. Dellasega.

5 Q. What was your understanding of the role of  
Thomas,

6 Thomas & Hafer in this matter?

7 MR. THOMAS: Well, obviously we've been  
8 retained to defend a federal lawsuit and I do  
not

9 want you to make inquiry of this witness of  
10 conversations he's had with us. I think that  
goes

11 well beyond the court's order.

12 BY MS. WALLET:

13 Q. Did Thomas, Thomas & Hafer have some role prior  
to

14 being retained to defend the county in this  
15 lawsuit?

16 A. My recollection is they were not brought in  
until

17 the EEOC complaint stage, but I cannot give you  
18 any date certain. That's not something that I  
can

19 recall.

20 MR. THOMAS: Nor would I permit him to

21 testify to that.

22 BY MS. WALLET:

23 Q. Did you enter your appearance, yours  
personally,

24 in any administrative or court?

25 A. My recollection is that I did file an answer on

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26 1                               behalf of the county with the EEOC.

2     Q.     To the best of your recollection, sir, did you  
do

3             anything else to formally represent the county?

4     A.     What do you mean by formally?

5     Q.     In an administrative agency or the court.

6             MR. THOMAS: You mean other than  
everything

7             he did in terms of the investigation and  
including

8             filing the answer to the EEOC complaint?

9             MS. WALLET: Yes.

10    A.     Not that I can recall.

11    BY MS. WALLET:

12    Q.     Did you engage in any settlement negotiations  
with

13             anyone regarding this case?

14    A.     Yes.

15    Q.     With whom?

16    A.     I recall attending a meeting where you were  
17             present, your client was present, Mr. Thomas  
and

18             Mr. Dellasega were present at Thomas, Thomas &  
19             Hafer. The date I have no present  
recollection.

20 Q. And what was your role in that meeting?

21 A. I was there on behalf of the County of  
Cumberland.

22 Q. Were you their counsel at that time?

23 A. I was one of their counsel at that time.

24 Q. Did you enter into any engagement letter with  
the

25 county with regard to your role in the

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27 1 investigation of Ms. Varner's  
complaints?

2 A. No.

3 Q. Was there any memorialization of what your role  
4 was to be in this matter?

5 A. No.

6 Q. Were you paid by the hour for your work?

7 A. Yes.

8 Q. To whom did you transmit your invoices?

9 A. I can't recall for sure.

10 Q. Was this matter invoiced separate from the  
11 invoices that may have been submitted by Mr.  
12 Johnson as solicitor for the county?

13 A. Yes.

14 Q. Do you know who paid your invoices?

15 A. Do I know who paid it? I believe the county  
paid

16 the invoices, but I have no firsthand knowledge  
of

17 that. They have been satisfied, I know that.

18 Q. How much were you paid for your role in dealing  
19 with the Varner complaint?

20 A. I don't know.

21 Q. Do you have an estimate?

22 A. No.

23 Q. More than \$10,000?

24 A. No.

25 Q. Not more?

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28 1 A. No. That's an estimate that it was  
not.

2 Q. Do you know what period of time you submitted  
3 invoices for this matter?

4 A. I would suspect in 1997 and I believe there  
were

5 some subsequent ones after '97.

6 Q. Do you believe after 1998?

7 A. Yes.

8 Q. And what do you recall doing in that period  
after

9 1998?

10 A. I assisted Mr. Dellasega and Mr. Thomas in  
their

11 roles.

12 Q. Have you had any experience in doing  
13 investigations of sex discrimination?

14 A. When you say experience, would you please  
explain

15 that?

16 Q. Prior to your being engaged to follow up on a  
17 complaint filed by Ms. Varner, had you  
previously

18 conducted any investigations into matters of  
sex

19 discrimination?

20 A. Not that I can recall.

21 Q. Same question with regard to matters of sexual  
22 harassment?

23 A. I have advised clients what their legal duties  
and

24 obligations are and assisted them carrying them  
25 out.



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29 1 Q. Was this your first investigation  
into allegations

2 of sexual harassment?

3 A. As I recall, this is the first one where I  
4 participated in the questioning of witnesses.

5 Q. Do you consider yourself to have expertise in  
the

6 area of sex discrimination or sexual  
harassment?

7 A. What do you mean by expertise?

8 Q. Do you believe that by virtue of your training  
or

9 experience you have a particular knowledge in  
this

10 area?

11 A. I believe that by my training and experience I  
12 have knowledge of the law in this area and can  
13 advise my clients accordingly and assist them  
in

14 carrying out their duties.

15 Q. Did you consider yourself to be an expert at  
the

16 time that you engaged in your investigation of  
Ms.

17 Varner's allegations?

18 A. Again, I'm not sure what you mean by an expert.

I

19 considered myself an attorney who practiced in

the

20 area of labor law and had knowledge of the law

in

21 this area.

22 Q. Okay, so Mr. Johnson tells you to call the

county

23 and you call Dan Hartnett. Tell me to the best

of

24 your recollection what Mr. Hartnett told you

25 during that first conversation regarding these

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30 1 matters.

2 A. I cannot recall specifics of the conversation.

I

3 know that we had a conversation and I'm sure  
that

4 Barbara Varner's name came up and that she was  
an

5 employee in probation, the basics I'm sure came  
6 up, but I have no present recollection of that  
7 conversation.

8 Q. Do you believe that first conversation was on  
the  
9 telephone?

10 A. Yes.

11 Q. Did you later meet with Mr. Hartnett?

12 A. Yes.

13 Q. Do you recall whether the meeting was shortly  
14 after the telephone conversation?

15 A. I believe that it was, but in the interim I  
also

16 know that we did some legal research on the  
17 county's role with a probation employee and the  
18 court's role.

19 Q. Ultimately you did meet with Mr. Hartnett I  
take

20           it?

21    A.     Yes, yes.

22    Q.     Was it just you and Hartnett?

23    A.     Yes.

24    Q.     Describe for me what happened during that first  
25           meeting.

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31 1 A. I can't remember. I have no present  
recollection.

2 It's been six and a half years ago. I'm  
certain

3 we met and my recollection is that we sometime  
4 thereafter, whether it was the same meeting or  
at

5 another time, had Barbara Varner meet with us  
in

6 the conference room in the personnel  
department

7 and had her tell us her complaints that she  
had

8 apparently initially told to Mr. Hartnett.

9 Q. Did you exchange any documents with Mr.  
Hartnett

10 prior to your meeting with Ms. Varner?

11 A. I can't recall.

12 Q. Do you believe that you may have had a copy of  
the

13 written complaint prior to your meeting with  
Ms.

14 Varner?

15 A. I can't recall. I believe that we asked Ms.

16 Varner to prepare a written complaint. I don't

17 know whether that was at the first meeting  
or  
18 whether Mr. Hartnett asked her to do so for  
our  
19 first meeting. I have no recollection. I  
do  
20 recall that we asked her to put her allegations  
in  
21 writing.

22 Q. Describe for me what you believed your mission  
was  
23 in this matter.

24 MR. THOMAS: Objection to the form. You  
may  
25 answer.

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32 1 A. Was to assist Mr. Hartnett on behalf  
of the county

2 and conduct an investigation and report  
findings

3 to the county solicitor.

4 BY MS. WALLET:

5 Q. That being Mr. Johnson?

6 A. Yes.

7 Q. Were you given any instructions as to how to  
8 conduct this investigation?

9 A. By whom?

10 Q. By anyone.

11 A. Not me personally.

12 Q. Did your firm or any other members of your  
firm

13 get some instructions?

14 A. It's my understanding that someone spoke to  
the

15 president judge and he authorized that the  
matter

16 be investigated by the county on his behalf,  
but I

17 did not participate in those discussions.

18 Q. And would that have been President Judge  
Sheely?

19 A. Yes.

20 Q. And how did you learn of that information?

21 A. Either from Mr. Hartnett or Mr. Johnson, I  
cannot

22 recall.

23 Q. And you believed prior to your beginning this  
24 investigation that the president judge in  
25 Cumberland County knew that you were going to  
do



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33 1 this investigation?

2 A. I believe that he knew that because I had a  
3 concern that if the employees and the  
supervisors  
4 didn't cooperate, what authority did we have to  
5 make them cooperate.

6 Q. Were you given any assurance that these  
employees  
7 would be required to cooperate with you?

8 A. I was not.

9 Q. Did you understand that someone from your firm  
was  
10 given such assurance?

11 A. I can't recall whether that assurance was given  
to  
12 Mr. Johnson or somebody else at the county, but  
I  
13 believe Mr. Hartnett told me that somehow that  
14 communication came down the chain but I was  
not  
15 part of it.

16 Q. Did you at any time meet directly with  
President  
17 Judge Sheely?

18 A. One time that I can recall.

19 Q. Do you recall when that was?

20 A. I believe that was in early June while we were  
21 still meeting with witnesses.

22 Q. That would be June of '97?

23 A. Yes.

24 Q. Do you believe you met with Judge Sheely before  
25 you had interviewed all of the individuals that

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34 1                               you intended to talk with?

2     A.     We met with Judge Sheely after I had spoken to  
3             quite a few witnesses and gave him some  
4             preliminary indications of what we were hearing  
5             and then we went back and called on a few  
more

6             people to meet with us again to gather  
further  
7             information.

8     Q.     When you say we, who was present at that  
meeting?

9     A.     My recollection is that all meetings with  
10            witnesses Dan Hartnett was with me. He  
arranged  
11            them, he coordinated them, and he participated  
in  
12            those with me.

13    Q.     Actually my question wasn't very clear, but I  
14            meant the meeting with Judge Sheely who was  
there?

15    A.     I know that I was there, I know that Dan  
Hartnett  
16            was there, I know that Hank Johnson was there.  
17            There may have been others, but I have no  
present

18 recollection.

19 Q. Did you request this meeting?

20 A. I don't recall who requested the meeting.

21 Q. Do you think Judge Sheely requested it?

22 A. I don't recall. I don't recall.

23 Q. What did you understand the purpose of the  
meeting

24 to be?

25 A. To update him on what the employees were  
telling

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35 1 us and to get some guidance on where  
to go from

2 there.

3 Q. What guidance did you receive at that time?

4 A. Go back and talk to a couple witnesses,  
including

5 the two employees that were accused, and get  
some

6 further information from them. And also talk  
to

7 them and ask them to come up with a plan to  
8 address the situation.

9 Q. And when you say the two individuals who  
were

10 accused, are we speaking of Gary Graham and  
Joe

11 Osenkarski?

12 A. Yes.

13 Q. Anybody else?

14 A. No.

15 Q. Did you talk to anybody other than Gary Graham  
or

16 Joe Osenkarksi as part of your investigation  
after

17 you met with Judge Sheely?

18 A. I believe that we did, but I cannot tell you  
who,

19 and I note that on my notes of meetings I did  
not

20 always put the dates of the meetings.

21 Q. In this meeting with Judge Sheely, did you  
22 understand that you were expected to report  
back

23 to Judge Sheely after you had done these  
things?

24 A. I understood that someone was to report back to  
25 Judge Sheely. I don't recall who it was, but  
it

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36 1 did not end up being me.

2 Q. Do you know why it wasn't you?

3 A. I think because Mr. Hartnett and I met with the  
4 county commissioners, Mr. Ward, Mr. Johnson,  
and

5 told them what we were hearing from the  
witnesses,

6 and I believe it was them who indicated either  
7 they or Mr. Ward would talk to the president  
8 judge.

9 Q. Mr. DeLuce, could you run down for me the  
10 significant events that occurred as part of  
your

11 investigation, in other words, could you just  
tell

12 me who you met with and what the series of  
events

13 were?

14 MR. THOMAS: Objection to the form. I  
don't

15 think that's a fair question because it  
requires

16 him to make a qualitative evaluation of what  
the

17 significant events were.

18 BY MS. WALLET:

19 Q. Strike the word significant. Could you tell us  
20 what events occurred from the time that you had  
21 your first we'll say meeting with Mr. Hartnett?

22 MR. THOMAS: To the extent that you can  
23 recall.

24 A. My recollection is that we met with Mrs.  
Varner,

25 got her verbal statement, asked her to put it  
in



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37 1 writing. She did. And she also indicated to  
us  
2 people that we should talk to regarding the  
3 matter. So, we began the process of talking to  
4 other employees as well as to Mr. Osenkowski  
and  
5 Mr. Graham and there were many meetings a  
couple  
6 times with certain individuals as more facts  
came  
7 out that we wanted to verify or reverify or  
get  
8 versions of what may have transpired. It was  
an  
9 ongoing process that lasted for obviously  
10 sometime, I believe it started in April, and  
we  
11 were still continuing to meet with people  
into  
12 June of 1997.

13 BY MS. WALLET:

14 Q. So, you met with Varner, you interviewed some  
15 people, you went back to the meeting with  
Judge  
16 Sheely, met with some additional potential

17 witnesses, then what?

18 MR. THOMAS: Well, he's already indicated

to

19 you earlier that he also conducted some legal

20 research, reviewed legal precedents. That's

my

21 problem with the question. I do not want

this

22 question or the answer to be considered to

be a

23 complete analysis of his investigation. You

have

24 his very lengthy report which details in some

25 detail the interviews, the things that he

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38 1                               conducted. So, I object to the  
question because I

2                    think it's misleading.

3     A.     Throughout the process I would take my notes  
and

4                   dictate a summary and that's how this report  
that

5                   you have before you was evolved. And I think  
that

6                   is why there are different dates and different

7                   versions because I would add to it as I learned

8                   more information. My impressions would change,  
my

9                   thoughts would change and it was an ongoing in  
my

10                  view work product that was my own impressions,  
but

11                 I included in that research that I had in my

12                 office from my research on these topics or as I

13                 thought I needed and I used that to help  
formulate

14                 legal opinions based on the facts after Mr.

15                 Hartnett and I would discuss them after talking

16                 with witnesses.

17     BY MS. WALLET:

18 Q. So, again, you met with some additional people,  
19 then someone met again with Judge Sheely, but  
not

20 you?

21 A. Not me.

22 Q. When in this time frame did you meet with the  
23 Cumberland County commissioners?

24 A. I believe I met with them sometime in mid June  
and

25 gave them verbally -- Mr. Hartnett and I both  
did

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39 1 and gave our impressions after what  
we were told

2 by the many witnesses. I also gave them a  
3 synopsis of what my opinion of the law is and  
4 discussed their role as the county versus the  
5 court's. That was also an issue.

6 Q. And who was present at that meeting?

7 A. The county commissioners, John Ward, Horace  
8 Johnson, Dan Hartnett, myself.

9 Q. Could you identify the commissioners for me?

10 A. Earl Keller, Nancy Besch, Marcia Myers.

11 Q. Was anyone else present at that meeting to the  
12 best of your recollection?

13 A. No.

14 Q. Were you given any additional assignments as a  
15 result of that meeting with the Cumberland  
County

16 commissioners?

17 A. No.

18 Q. Did you make any recommendations to the  
Cumberland

19 County commissioners at that time?

20 A. I believe Mr. Johnson made some recommendations  
21 but not myself. I believe I was there to  
provide

22           them with the legal issues and what the  
witnesses

23           were telling myself and Mr. Hartnett.

24    Q.     Did you give them anything in writing at that  
25           time?

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40 1 A. No.

2 Q. Did you ever give the county commissioners  
3 anything in writing?

4 A. No.

5 Q. Did you ever give Dan Hartnett anything in  
6 writing?

7 A. If I did -- I may have, I can't recall. It may  
8 have been cases, it may have been summary of  
the

9 law, but I did not give him my memorandum  
that's

10 the subject of the court's motion.

11 Q. After you met with the Cumberland County  
12 commissioners, did you interview any other  
13 individual?

14 A. I have no recollection that I did anything  
further

15 other than maybe conferring with Mr. Hartnett,  
16 but, no, I did not interview anybody else.

17 Q. Did you consider your investigation to be  
complete

18 at least by mid June of 1997?

19 A. I'm not sure if I would use the term complete.

I

20 think my role at that time was terminated or no

21 longer -- I was no longer to continue the  
22 investigation.

23 Q. How did you come to the conclusion that your  
role

24 was terminated?

25 A. My recollection was Mr. Ward indicated that he



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41 1 would go talk to the president judge  
to discuss

2 the matter.

3 Q. And that being President Judge Sheely?

4 A. Yes.

5 Q. Did you participate in any other meetings  
6 regarding this investigation except for the  
7 meeting you described earlier at Thomas, Thomas  
&

8 Hafer after you met with the Cumberland County  
9 commissioners?

10 MR. THOMAS: Objection to the form. You  
may

11 answer.

12 A. I'm sure that I did in preparing responses to  
the

13 EEOC, but I have no present recollection. My  
14 role -- or I was still involved as special  
counsel

15 for the county on this matter. What exactly I  
did

16 I have no present recollection.

17 BY MS. WALLET:

18 Q. What did you do in order to prepare the  
response

19 to the EEOC?

20 A. I can't recall specifically.

21 Q. Do you know who verified the answer to the  
EEOC?

22 A. Not offhand, no, I do not.

23 Q. Do you know whether it was verified?

24 A. Not offhand. I don't have the document in  
front

25 of me.

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42 1 Q. Could you describe the process? Did you  
draft the

2 answers and then did someone look at--

3 MR. THOMAS: Let me have a moment with the  
4 witness if I may.

5 A. Yeah.

6 MS. WALLET: Let the record reflect that  
Mr.

7 Thomas and Mr. Dellasega have now left the room  
8 with Mr. DeLuce.

9 (Recess taken)

10 BY MS. WALLET:

11 Q. Now, I believe when we broke I had just asked  
you

12 to describe the process whereby the EEOC  
response

13 was filed by you.

14 A. My recollection is that I drafted the response  
and

15 I'm sure that I had input from Mr. Hartnett and  
16 Mr. Ward. But my response, as I recall, was  
that

17 you sued the wrong party, that we had no  
control

18 over the probation department and the employees

in

19           question; therefore, the Administrative Office  
of

20           Pennsylvania Courts should have been the  
21           defendant. So, my recollection is that it was  
22           basically a legal argument.

23    Q.    While we were off the record, did you have the  
24           opportunity to review any documents that  
refreshed

25           your recollection?

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43 1 A. No, and I knew -- I recalled that -- no, I  
didn't

2 look at any documents to refresh my memory.

3 Q. All right. We were still in the events that  
you

4 participated in as part of your assignment  
from

5 the county to investigate this complaint from  
Ms.

6 Varner.

7 MR. THOMAS: Objection to the form. Go  
8 ahead.

9 MS. WALLET: I didn't get to the question  
10 yet.

11 MR. THOMAS: That's why I'm objecting, it  
12 wasn't a question.

13 BY MS. WALLET:

14 Q. My question is after you filed the EEOC  
response,

15 whatever that response might have been, did  
you

16 participate in any other meetings?

17 A. I believe that I did, but I cannot give you  
18 specifics. I know that I had discussions  
and

19 meetings with Jim Thomas, Paul Dellasega,  
a  
20 representative from the county and/or Mr. Ward,  
21 but I cannot give you specifics in any way,  
shape  
22 or form.

23 Q. How would you describe the level of compliance  
of  
24 the individuals that you spoke with as part of  
25 this investigation?

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44 1 MR. THOMAS: Objection to the  
form. You may

2 answer it if you understand.

3 A. Some were very forthcoming, some were not.

4 BY MS. WALLET:

5 Q. Did you believe you had sufficient cooperation  
by

6 the individuals that you interviewed to allow  
you

7 to come to some conclusions regarding these  
8 complaints?

9 MR. THOMAS: Objection to form. You may  
10 answer.

11 A. I felt that I had cooperation from plenty of  
12 witnesses. Some that didn't cooperate I tried  
to

13 determine why. And in my view sometimes the  
lack

14 of cooperation or being forthright with me or  
15 providing us with everything affected  
credibility

16 issues.

17 BY MS. WALLET:

18 Q. Had you known or worked with -- let's ask it  
19 separately. Had you known any of the

individuals

20           that you spoke with as part of your  
investigation

21           prior to undertaking the investigation?

22    A.     The two individuals that were accused I did not  
23           know. In the probation department there may  
have

24           been one or two that years ago when I did  
criminal

25           work were involved with a defendant that I may



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45 1                    have represented. I recognized a  
couple names and

2                    a couple persons, but they were not personal  
3                    friends and they were tangential business  
4                    acquaintances by virtue of them being a  
probation

5                    officer for someone who I may have been  
6                    representing.

7    Q.            And other than that description you just gave  
me

8                    of a professional acquaintance, did you have  
any

9                    professional responsibilities to represent any  
of

10                  these individuals that you interviewed?

11    A.            I do not recall ever representing any of the  
12                  persons that I interviewed as their attorney.

13    Q.            Did you conduct all of these interviews in  
14                  basically the same way or did the way in which  
you

15                  conducted the interview differ depending on who  
16                  was being interviewed?

17    A.            I'm not sure I understand the question.

18    Q.            Did you have some sort of a predetermined  
script

19 or a method of operation?

20 A. Yes. We took the complaints that were provided  
21 to

22 us by Mrs. Varner and the person she said who  
23 either witnessed it or part of it, part of the  
24 incident, and we would question them on their  
25 role, what they saw or heard. And then if they  
told us of persons who may have seen or heard

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46 1 something or witnessed something, we  
would call

2 them in and direct their attention to those  
issues

3 to get their version of what transpired.

4 Q. Did you give any of these individuals with whom  
5 you spoke any documents?

6 A. I have no recollection of doing that.

7 Q. Do you have any recollection of showing them  
any

8 documents?

9 A. I have no recollection. I may have or I may  
not,

10 I don't recall.

11 Q. I ask you to look, please, at Deposition  
Exhibit

12 Number 1. It's the package of your notes. I  
13 believe I asked you this question before, but  
as

14 an abundance of caution I will ask you again.  
Do

15 you believe that there were any notes of  
16 interviews that are not contained in this  
package?

17 MR. THOMAS: Objection, asked and

answered.

18 A. My belief is that these are all of those  
19 documents. The only concern I have is John  
Roller

20 and I just want to make sure my notes -- oh, it  
21 is, John Roller's notes are in here also.

22 Q. Would that be at the document marked 20 of 24?

23 A. Yes. Yes.

24 Q. And continuing through to 21 of 24?

25 A. 20 and 21. To be honest with you, I cannot

Exam./Wallet - DeLuce

47 1                   decipher what I was doing with 22.

Obviously 23

2                   is self-explanatory. I don't have 24 of 24  
here.

3    Q.       Take a look at 24. We'll add it to the  
package.

4    A.       That looks -- that is the same, that's 23 of 24  
in

5                   my packet.

6    Q.       I'm sorry, I stand corrected.

7    A.       I have no 24 of 24 in front of me.

8                   MS. WALLET: Jim, do you know whether we  
have

9                   24?

10                  MR. THOMAS: I do not. The last page of  
11                  notes that I have is the document that you have  
as

12                  marked 23 of 24.

13                  MS. WILLIAMS: I have 24 of 24 being the  
fax

14                  sheet, the concluding fax sheet from Thomas,  
15                  Thomas & Hafer.

16                  MS. WALLET: Thank you.

17    A.       Thanks.

18    BY MS. WALLET:

19 Q. Do you believe, sir, that you conducted any  
20 interviews of anyone for which you did not have  
21 notes?

22 A. Not to my recollection.

23 Q. Sir, let's exclude the first several pages of  
this

24 document which I believe we've already  
determined

25 are not in your handwriting, and if you could  
just

Exam./Wallet - DeLuce

48 1 tell me which of those documents  
using the numbers

2 at the top are not your notes?

3 A. 2 of 37, 3 of 37, 4 of 37 are not my notes.

4 Q. Let's start with 5 of 37 and could you identify  
5 for me what these are, whose interview notes  
they

6 were?

7 A. This is my handwriting of a meeting that I had  
8 with Mike Varner. The date I am not certain.

9 Q. 6 of 37?

10 A. My handwritten notes of a meeting I had with  
Darby

11 Christlieb in my handwritten notes. 7 is a  
12 continuation of that.

13 Q. Do we know what date you interviewed Darby  
14 Christlieb?

15 A. No.

16 Q. Do you know, sir, whether there is any  
17 significance to the order in which these notes  
are

18 contained in this package?

19 A. I don't think there is any significance. I did  
20 not make this order.

21 Q. Did your original file have any ordered note?

22 A. No.

23 Q. So even if we saw your original file, we  
wouldn't

24 be able to tell who you did first, who you did

25 second, who you did third?



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49 1 A. No. All I can recall is we met with Mrs.

Varner

2 first. After that, I can't say for certain,

3 because some of these people we met with more  
than

4 once.

5 Q. Could you continue with the package, please?

6 A. Sam Miller, 8 of 37, Pages 1 and 2 -- or  
actually,

7 8 and 9; Deborah Reitzel, Pages 10 and 11; Greg

8 Miller, Pages 12 and 13; Mark Galbreath, Pages  
14,

9 15 and 16; Nick Baralett, Pages 17, 18;  
Jennifer

10 Crum, and you can see I have a date there  
4/22/97,

11 I believe that to be the date I met with  
Jennifer,

12 Pages 19 and 20.

13 Q. Page 20 has a lot of bleed through. I take it  
14 that your notes are only the top three lines?

15 A. Yes.

16 Q. And that any of this other document related to  
the

17 reverse side of the sheet when it was copied?

18 A. Probably.

19 MR. THOMAS: Objection to the form. The  
20 representation, again, Deb, is what, the first  
21 three lines?

22 MS. WALLET: Yes.

23 MR. THOMAS: Oh, all right. I'm sorry,  
for  
24 the second page?

25 MS. WALLET: Correct.

Exam./Wallet - DeLuce

50 1 A. Want me to continue?

2 BY MS. WALLET:

3 Q. Please.

4 A. Page 21 is Gary Graham, Page 22 is Gary  
Graham,

5 Page 23 is Gary Graham, Page 24 is Gary  
Graham.

6 Q. Do we know when you conducted that  
interview?

7 A. No, I do not. Page 25 is Joseph Osenkarski  
and

8 that was conducted on 4/29/97. Page 26 is  
also

9 Joseph Osenkarski. Page 27 is Kerry Howser, 28  
is

10 Kerry Howser, 29 is Kerry Howser, 30 is Kerry  
11 Howser. 31 is Deborah Green, 32 is Deborah  
Green,

12 33 is Deborah Green, 34 is Deborah Green, 35 is  
13 Deborah Green, 36 is Deborah Green. Page 37  
is

14 Barbara Varner and we met with her on May  
6th,

15 1997.

16 Q. Again, the we is you and Mr. Hartnett?

17 A. Yes. Page 1 of 24--

18 Q. Is more of Ms. Varner?

19 A. I do not believe. Yes, I believe that Page 1  
of

20 24 -- I'm not certain what 1 of 24 is. I  
can't

21 tell. There's obviously 2 of 24, which is a  
22 continuation of that. It may be all three for  
23 Barbara Varner, I don't know.

24 Q. If you could go back to 1 of 24, I call your  
25 attention to the note "when she was at C&Y,"  
which

Exam./Wallet - DeLuce

51 1 I assume means Children and Youth,  
"he would" does

2 that refresh your recollection?

3 A. You're on 1 of 24?

4 Q. Correct.

5 A. That is probably the second page of the Barbara  
6 Varner interview that occurred on 5/6/97.

7 Q. Now we're up to 2 of 24?

8 A. 2 of 24 is also a continuation of Barbara  
Varner

9 and 3 of 24 is the last page of that Barbara  
10 Varner interview.

11 Q. All right.

12 A. The next one, 4 of 24, is Barbara Varner.

13 Q. Do you believe that these notes were taken  
before

14 or after the earlier notes?

15 A. These look to have been taken before the  
earlier

16 notes. I don't know what date they were taken.

17 But 4 of 24, 5 of 24, 6 of 24, 7 of 24, 8 of  
24, 9

18 of 24, 10 of 24, 11 of 24, appear to all be the  
19 same interview.

20 Q. And that being the interview with Barbara

Varner?

21 A. Yes. Page 12 of 24 appears to be the second  
time,  
22 it says BV-2, I assume that's the second time  
that  
23 I met with Mrs. Varner and that would have been  
on  
24 4/22/97. Page 13 of 24 is the second page of  
that  
25 interview. 14 of 24 I cannot identify what  
that

Exam./Wallet - DeLuce

52 1 is from, whether that is a  
continuation of the

2 previous two pages or it is something  
independent

3 of that, because I have at the top 2/4  
telephone

4 call. I can't identify that page.

5 Q. It is in your handwriting?

6 A. It is my handwriting.

7 Q. So, you are not sure whether it's notes of a  
8 telephone call with Barbara Varner or with  
someone

9 else?

10 A. I can't identify that. I don't know who I had  
11 that conversation with.

12 Q. Do you believe it might have been a  
conversation

13 with Debra Wallet?

14 A. Very possible.

15 Q. What about 15 of 24?

16 A. These are my own personal notes, but not of any  
17 witness.

18 Q. Do you recall--

19 A. Frankly, let me go off the record.

20 (Discussion held off the record between

Mr.

21 DeLuce and Mr. Thomas)

22 A. 15 of 24 is clearly my handwriting and I do not

23 believe it is of any specific witness. The

24 language at the bottom may have been from a

25 conversation that we had with Mr. Osenkarski

and



Exam./Wallet - DeLuce

53 1                               this may have been his plan as to  
what to do that

2                   we asked him to come up with.

3                   16 of 24, obviously it's my handwriting

4                   addressing Barb. I put her name at the top,

Barb

5                   Varner. It looks like it might be her work

6                   schedule when she will be available to talk to  
us,

7                   but I am not certain.

8    BY MS. WALLET:

9    Q.    Do you have any recollection of the "let me in"  
10           quote?

11   A.    I don't have any present recollection. I  
believe

12           though there is a reference to that in my  
report.

13           And I can tell you that my report what I would  
14           typically do is when I would be back at my  
office

15           I would dictate a summary of my notes as to  
what

16           the witnesses said while things were fresh in  
my

17           mind because my notes are so cryptic it's very

18           hard sometimes for me to recreate them six or  
19           seven years later.

20    Q.    And were the summary of your notes contained  
21           in  
22           what has been marked as DeLuce Deposition  
23           Exhibit

24           2?

25    A.    Yes.  You can see at the top Confidential  
26           Attorney

27           Impressions.  Those were my impressions.  Do  
28           you

29           want me to continue?

Exam./Wallet - DeLuce

54 1 Q. Please.

2 A. 16 and 17 I recognize as my handwriting and  
this

3 must be information I suspect that Barb gave  
us,

4 I'm not sure. I believe 18 is a summary of  
5 salaries of various employees. 19 is my  
6 handwriting. I have no present recollection of  
7 what that is.

8 Q. Do you know who Christy Steinbacher is?

9 A. No idea. 20 I believe is John Roller. 21 is  
John

10 Roller. 22 is my own cryptic notes.

11 Q. Do you know what they relate to?

12 A. I would be speculating at this point. I can't  
13 recall presently.

14 MR. THOMAS: Don't speculate.

15 BY MS. WALLET:

16 Q. Can you at least tell me on 22 of 24 is that  
SM,

17 GM with an underline on the left-hand side?

18 A. The left hand at the top is an SM, below that  
is

19 an HT, below that is DC, below that is a GG, to  
20 the right it's JO, BV and obviously at the top

I

21           have Mike Varner.

22    Q.     Can you identify any of those initials?

23    A.     SM is Sam Miller, HT is Hank Thielemann, DC is

24           Darby Christlieb, GG is Gary Graham, BV I

believe

25           is Barbara Varner, JO is Joseph Osenkowski.

Exam./Wallet - DeLuce

55 1 Q. I have to ask just one question  
under JO, do you

2 know what a-s-p-a-r-g-u-s refers to?

3 A. That was an incident that is referred to in my  
4 report.

5 Q. Is it a spelling of--

6 A. Asparagus.

7 Q. Thank you.

8 A. Page 23 of 24 looks like is my handwriting.

I

9 don't know the source of that information,  
but

10 that's my handwriting.

11 Q. Were those pages that were identified as notes  
of

12 interviews, were there any writings on those  
notes

13 that did not belong to you?

14 A. I did not see any when I reviewed those pages  
at

15 this time.

16 Q. And except for the documents marked 1 through 4  
of

17 37, the rest of this package is your  
handwriting?

18 A. Yes.

19 Q. Do you believe that these notes, at least with  
20 respect to notes of interviews, accurately  
reflect

21 what was told to you by the person being  
22 interviewed?

23 MR. THOMAS: Objection to the form.

24 A. I think it's my cryptic notes of what people  
were

25 telling me and I certainly believe that I was

Exam./Wallet - DeLuce

56 1                    accurate in what I wrote down. I  
think I was not

2                    complete in all areas.

3     Q.            Now, as I understand the process, you would  
take

4                    these notes, go back to your office and dictate  
5                    something?

6     A.            Yes.

7     Q.            Did you do the dictation on the same day or the  
8                    next day after you did the interviews?

9     A.            I tried to do it as soon thereafter as possible  
10                   while the information was fresh in my mind.

11                   Whether it happened the same day, the next day,  
I

12                   can't tell you.

13    Q.            Are there any other dictated versions of your  
14                   interviews other than that contained in

Deposition

15                   Exhibit Number 2 or Deposition Exhibit Number  
16                   3?

17    A.            Not to my knowledge.

18    Q.            So that if you interviewed someone and you took  
19                   notes contained in Deposition Number 1,

there

would be a typed version contained either

in

20           Deposition Number 2 or Number 3?

21    A.    I cannot say for certain there is a typed  
version

22           of every interview. Attempts were made to have  
it

23           that way, but whether that actually turned out,  
I

24           can't tell you.

25    Q.    Let's look at Deposition Number 2. Do you



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57 1 recognize that document, sir?

2 A. This document is dated April 30, 1997. Yes, I  
3 recognize it. It's a memorandum that says from  
4 me, DWD, to HAJ, Horace A. Johnson, of my  
office.

5 Q. Do you believe you prepared that document in  
this

6 version, this version being the one that's  
marked

7 Deposition 2, on or about April 30, 1997?

8 A. No.

9 Q. Describe for me when you believe that you  
prepared

10 Deposition 2.

11 A. Deposition 2 was a work in process that after  
12 interviews I would add to it primarily the  
facts

13 section. Therefore, I suspect what happened is  
no

14 changes were made to the original date on Page

1

15 even though changes were made to the body of  
the

16 document. And I don't see it offhand, but I do  
17 recall when I looked at this, yes, Page 10

there's

18 a reference that I met with Varner on May 6th,  
19 1997, so it was obviously after it. That's

why

20 this document was a work in process that  
would

21 change from interview to interview and the date  
on

22 the front cover is not the date of the last  
23 addition or change.

24 Q. Do you believe Deposition Number 2 to be your  
last

25 version of what you've described as this work  
in

Exam./Wallet - DeLuce

58 1 progress?

2 A. No.

3 Q. Would you just look for a moment at Deposition  
4 Exhibit 3 and tell me whether you believe  
that's

5 the last version of the work in progress?

6 A. To the best of my knowledge today, I believe  
this

7 is the last version of this memorandum.

8 Q. Let me ask you, sir, with respect to Deposition  
9 Number 2, does it accurately reflect in the  
10 section marked Facts the information that was  
11 relayed to you by the individuals noted in  
12 Deposition Number 2?

13 MR. ADAMS: Facts or background?

14 MS. WALLET: Facts.

15 MR. THOMAS: Objection to the form. You  
may

16 answer.

17 A. Yes.

18 BY MS. WALLET:

19 Q. Do you believe that there's anything contained  
in

20 the Facts section of Deposition Number 2 that  
is

21           inaccurate?

22    A.     Well, let me say this.  I think it's an  
accurate

23           depiction by me of what the witnesses told me  
at

24           that time.  Whether the statement or allegation  
is

25           true, they may not be true.  It's based on what

Exam./Wallet - DeLuce

59 1 the witness told me at the time.

2 Q. Is there anything contained in Deposition 2 in  
3 Roman Numeral III entitled Facts on Page 6  
through

4 and including 24 that you believe does not  
5 accurately depict what was told to you by the  
6 individuals indicated?

7 MR. THOMAS: Objection to the question. I  
8 think it's exactly the same question that was  
9 responded to and he's testified that he  
believes

10 that portion of the report accurately reflects  
11 what he was told without any comment on whether  
or

12 not the facts as such are actually correct.

13 A. I agree.

14 BY MS. WALLET:

15 Q. Some time has passed since April 30, 1997. In  
the

16 period of time since April 1997 have you become  
17 aware of any inaccuracies in your report marked  
18 Deposition 2?

19 MR. THOMAS: Objection to the form. You  
may

20 answer.

21     A.     I was advised by Mr. Hartnett I believe in July  
22     of  
23     1997 that Mr. Graham indicated that he and Mrs.  
24     Varner had a relationship and that he indicated  
25     this to Judge Sheely. He and Mrs. Varner both  
denied that they had a relationship when I  
spoke

Exam./Wallet - DeLuce

60 1 to them.

2 BY MS. WALLET:

3 Q. Did Graham at any time ever tell you directly  
that

4 he had had a sexual relationship with Barbara  
5 Varner?

6 A. He told me that only one time -- strike that.  
No,

7 he told me they did not have a sexual  
8 relationship.

9 Q. And that would be with respect to any of the  
times

10 that you interviewed Mr. Graham directly?

11 A. Yes. I don't know that I asked him every time.

12 Q. Now, with respect to Deposition Exhibit Number  
3,

13 they have the same basic divisions, a  
Background

14 section and Section III again is Facts. With  
15 respect to Deposition Exhibit 3 between Pages 6

16 and 25 up to the part marked Attorney

Impressions,

17 do you believe that the facts contained here

18 accurately reflect what was told to you by

the

19 individuals noted?

20 A. Yes.

21 Q. Since the writing of this version, this  
being

22 Deposition 3, have you come to any  
realization

23 that any of these facts are incorrect?

24 A. Again, as I stated with Deposition 2, I  
later

25 learned that Mr. Graham indicated that there  
was a



Exam./Wallet - DeLuce

61 1 relationship between him and Mrs.

Varner and

2 obviously that is not reflected in my report.

I

3 reflected that there was not one as I recall.

4 Q. Would you describe for me what occurred between

5 Deposition Number 2 and Deposition Number 3?

6 A. My recollection is that I became less concerned

7 that we had a sexual harassment issue and

more

8 concern if we had anything it was an

employment

9 supervisory issue.

10 Q. And why did you come to that conclusion?

11 A. Based upon the treatment or management style

12 towards the employees in the department.

13 Q. Whose management style?

14 A. I would say it's Mr. Osenkowski and Mr. Graham

who

15 were the accused here.

16 Q. Do you know whether you conveyed to Judge

Sheely

17 any recommendations as indicated in Deposition

18 Number 2?

19 A. My recollection is that I felt that some type

of

20 suspension based on what I was hearing to date,

21 sensitivity training, training on what is

sexual

22 harassment, and some transfer of supervisory

23 responsibilities should be seriously

considered,

24 as well as the role of the overall supervisor

in

25 juvenile probation based on what he told me and

Exam./Wallet - DeLuce

62 1                                what the others told me, his  
nonactive role in the  
2                                day-to-day management I felt that since the  
3                                president judge is busy trying cases and  
hearing  
4                                cases and cannot be there to watch what goes on  
in  
5                                that department, that he should have someone  
there  
6                                who does.

7    Q.                        And did you convey that directly to Judge  
Sheely?

8    A.                        I conveyed those issues and concerns along with  
9                                Mr. Hartnett to Judge Sheely in the one meeting  
10                               that I can recall having with him.

11   Q.                        And what if any response did you receive from  
12                                Judge Sheely to those recommendations?

13   A.                        Go go back and talk to Gary and Joe and ask  
them  
14                                to come up with a plan and let's see what they  
15                                come up with and indicate that you have some  
16                                concerns with some of the things that you have  
17                                heard to date from other employees. And we did  
18                                meet with them again and tell them that.

19   Q.                        And this meeting was with Mr. Graham and Mr.

20 Osenkarski at the same time?

21 A. My recollection is that it was separate. And  
my

22 recollection is that it was separate and I  
think

23 we put more of the burden on Mr. Osenkarski who  
24 was the overall supervisor.

25 Q. So, there was a meeting or more than one  
meeting

Exam./Wallet - DeLuce

63 1                                between you, Gary Graham, Dan  
Hartnett after you

2                                met with Judge Sheely?

3    A.            I can't recall specifically. My belief is it  
was

4                                one meeting with Mr. Graham and two meetings  
with

5                                Mr. Osenkarski, one when we gave him the  
directive

6                                to come back with something, and two when he  
came

7                                back to meet with us to give us some  
indications.

8    Q.            Describe for me the meeting with you, Dan  
Hartnett

9                                and Gary Graham.

10   A.            Which meeting?

11   Q.            Immediately after your meeting with Judge  
Sheely

12                                in which he instructed you to go to Graham and  
ask

13                                for his suggestions.

14                                MR. THOMAS: Objection to the form. You  
may

15                                answer.

16 A. My recollection is -- I don't have any specific  
17 recollection of specific discussions. I think  
18 the  
19 meetings would start out calm and escalate  
20 through  
21 the discussions with Mr. Graham.

20 BY MS. WALLET:

21 Q. Do you know where this meeting took place?

22 A. In the personnel conference room next to  
23 Mr.

24 Hartnett's office at the county  
25 courthouse.

26 Q. Just the three of you?

27 A. Just the three of us.

Exam./Wallet - DeLuce

64 1 Q. Tell us what you recall about that  
meeting.

2 MR. THOMAS: Asked and answered.

3 A. That's all I can recall.

4 BY MS. WALLET:

5 Q. Well, who started the meeting?

6 A. I'm sure that I did and Mr. Hartnett had a role  
in

7 it and we asked, we indicated I'm sure that  
there

8 were concerns that we had what we heard from  
the

9 witnesses and we wanted him and we were going  
to

10 ask Mr. Osenkarski to come up with some

11 recommendations as to how to address them in  
order

12 to protect them and their employer.

13 Q. Do you have at least a month when you think  
that

14 this meeting occurred?

15 A. It happened after we met with Judge Sheely. My  
16 recollection is we met with Judge Sheely  
sometime

17 in early June, but I'm not certain of dates.

18 Q. Do you know whether you met with Gary Graham  
19 before you met with Joe Osenkarski?

20 A. I don't know that.

21 Q. Do you remember anything about the order in  
which  
22 these meetings occurred?

23 A. No.

24 Q. Okay, I'm still on the meeting with Gary  
Graham.

25 MR. THOMAS: There's no question I don't



Exam./Wallet - DeLuce

65 1 think. Ask a question, please.

2 BY MS. WALLET:

3 Q. What else do you remember occurring at that  
4 meeting?

5 A. Gary disagreed with what some of the witnesses  
had

6 told us, said they were lying and it was  
7 untruthful.

8 Q. Did you tell Mr. Graham who said what?

9 A. I can't recall.

10 Q. Do you believe you did?

11 A. I think that if I recalled incidents he would  
have

12 an idea of who I was talking about, but I can't  
13 recall specifics. I felt my role was to alert  
him

14 to the allegations against him and get his  
version

15 of what is being claimed.

16 Q. Do you recall any other response that Mr.  
Graham

17 made?

18 A. I remember him having some documents that he  
19 indicated would prove he was right and they  
were

20               wrong. And he let me see them from a distance  
and

21               he said I don't think I'm going to give them to  
22               you and he pulled them back.

23    Q.       Do you know what kind of documents they were?

24    A.       No, I did not. No, they weren't prepared by me  
25               and I do not know.

Exam./Wallet - DeLuce

66 1 Q. Do you know whether they were  
handwritten or

2 typed?

3 A. I can't recall.

4 Q. Did you ask to have copies of them?

5 A. Yes.

6 Q. What response did you get?

7 A. Whatever I said in my report. I can't --  
whatever

8 I said there.

9 Q. You said that it started calm and then it  
10 escalated. What do you mean by that?

11 A. Gary was upset and disagreed with what the  
12 witnesses said and felt they were not being  
13 truthful.

14 Q. Did he raise his voice?

15 A. He got excited would be how I would phrase it.

16 Q. Did he raise his voice?

17 A. Oh, sure.

18 Q. Did he swear?

19 A. I do not recall that, no.

20 Q. Did he have any suggestions for what ought to  
be

21 done here?

22 A. Not that I can recall.

23 Q. Well, did he tell you what he thought you  
should

24 do?

25 A. I think Gary felt that there was no harassment  
or

Exam./Wallet - DeLuce

67 1                   any problems here and it was,  
therefore, nothing

2                   needed to be done.

3    Q.       How did the meeting end?

4    A.       I don't recall except that it, you know, we  
5                   reached -- it ended. I don't know of anything  
in

6                   particular that I can recall at six and a half  
7                   years ago.

8    Q.       Tell me about the first meeting that you had  
with

9                   Joe Osenkarski, Dan Hartnett and yourself after  
10                  you had spoken to Judge Sheely?

11   A.       I think it would have been much the same, that  
we

12                  indicated that we have heard some statements  
from

13                  some witnesses that raise concerns to us that  
14                  could cause some liability to the employer and  
15                  that some action needed to be taken to address  
the

16                  situation for all parties involved. And we  
asked

17                  him to come up with a plan.

18   Q.       What was Mr. Osenkarski's response?

19 A. He said he had some ideas, he would work on  
them

20 and get back to us.

21 Q. What prompted you to have a second meeting with  
22 him?

23 A. He was to present those ideas to us.

24 Q. Back at the first meeting what else did you  
tell

25 Mr. Osenkarski that you recall about the

Exam./Wallet - DeLuce

68 1                                   allegations?

2     A.     I believe -- I have no present recollection  
except

3             to say I would have done the same as I did with  
4             Gary, that is, review the allegations with him.

I

5             can't recall him having any specific response  
6             except that he was not aware of them.

7     Q.     He was not aware of what?

8     A.     I think you're better off to look at my report  
9             where I summarize what Mr. Osenkowski said to  
us  
10            regarding the incidents that we reviewed with  
him.

11    Q.     And you are looking at which version?

12    A.     Why don't we go to version Deposition Exhibit  
3?

13    Q.     That being the June 4, '97 version?

14    A.     Yes.

15    Q.     And you are referring us to what page?

16    A.     I don't know. I'm looking for it.

17            MR. THOMAS: While you're looking for  
that,

18            off the record for a minute.

19            (Discussion held off the record)

20 A. The question was?

21 BY MS. WALLET:

22 Q. When we got a little off the record discussion  
you

23 were looking for the page that would indicate  
your

24 notes of this meeting.

25 A. I'm not sure that Page 22 reflects specifically  
my



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69 1 notes of the meeting. Page 22 reflects a  
summary

2 of what Mr. Osenkowski told us in our  
interviews,

3 which was just a denial of everything in a  
summary

4 word or words.

5 Q. Mr. Osenkowski told you that he had never seen  
6 Graham lose his temper?

7 A. Whatever I have in here is an accurate  
depiction

8 of what I was told and what Mr. Hartnett was  
told.

9 Q. I'd ask you to read that paragraph please and  
then

10 I'll ask you a couple of questions about it.

11 MR. ADAMS: The entire paragraph on Page  
22?

12 MS. WALLET: Yes.

13 A. Yes, your question?

14 BY MS. WALLET:

15 Q. Did Mr. Osenkowski tell you that he had never  
seen

16 Graham lose his temper?

17 MR. THOMAS: He's already told you that

18           whatever Mr. Osenkowski told him is reflected.

19           What are you asking him to do?

20                   MS. WALLET: I'm asking him to confirm  
that

21           Mr. Osenkowski told him that Graham never lost  
his

22           temper.

23                   MR. THOMAS: Do you have any independent  
24           recollection today of what Mr. Osenkowski told  
you

25           during your interviews six and a half years  
ago?

Exam./Wallet - DeLuce

70 1 A. No.

2 MR. THOMAS: Other than what's written?

3 A. Other than what's written here on my notes, no.

4 BY MS. WALLET:

5 Q. Well, let me ask it this way. You wrote on  
Page

6 22, quote: "He claims he has never seen Graham  
7 lose his temper, never use the "f" word,  
although

8 upon further questioning admitted that at times  
9 Gary gets very excitable." Is that an accurate  
10 statement of what Mr. Osenkowski told you?

11 MR. THOMAS: We'll agree that you've read  
it

12 correctly.

13 MS. WALLET: That's a different question.

14 MR. THOMAS: The question has been asked  
and

15 answered.

16 BY MS. WALLET:

17 Q. Does that accurately reflect what Mr.  
Osenkowski

18 told you?

19 MR. THOMAS: Objection to form. You can  
20 answer it.

21 A. Yes.

22 BY MS. WALLET:

23 Q. Do you have any written confirmation, typed  
24 confirmation, of what occurred when you met  
with

25 Mr. Osenkarski the second time?

Exam./Wallet - DeLuce

71 1 A. If it's not in this report, the  
answer is no.

2 Q. And this report meaning Deposition?

3 A. 2 or 3.

4 Q. Well, did Mr. Osenkarski ever give you any  
5 suggestions as to what he thought should be  
done

6 here?

7 A. Yes.

8 Q. Did you receive them in writing or otherwise?

9 A. I know we received them verbally. Whether they  
10 were in writing, I have no recollection of  
that.

11 Q. And what were Mr. Osenkarski's suggestions?

12 A. I can't remember specifically what they were.  
I

13 don't have a present recollection of what  
they

14 were.

15 Q. Do you remember anything?

16 A. I know that--

17 MR. ADAMS: Object to form.

18 A. I know that there were -- I believe there  
were

19 some type of training or seminar or some type

of

20 educational program on what is sexual  
harassment.

21 Beyond that I have no present recollection.

22 BY MS. WALLET:

23 Q. Did he recommend any transfers?

24 A. Not that I can recall. Not that I can recall

25 other -- not that I can recall.

Exam./Wallet - DeLuce

72 1 Q. Did he recommend any suspensions?

2 A. No.

3 Q. Did he recommend any action be taken against  
Gary

4 Graham?

5 A. No, except -- and I can't remember the time  
6 frame -- whether by then we had indicated that  
7 another senior PO should be reviewing her work  
and

8 recommended that Gary not have direct  
supervisory

9 control over her. When that went into effect,  
10 what he did in carrying it out, I can't  
remember,

11 but I do believe that at some point that that  
12 occurred. I don't know when. You have to  
13 understand we didn't have authority. We could  
14 only make recommendations.

15 Q. Did you take any of the recommendations from  
Mr.

16 Osenkarski back to Judge Sheely?

17 A. I did not.

18 Q. Do you know if anyone else did?

19 A. I do not know if Mr. Hartnett or anyone else  
did.

20 Q. You did not meet again with Judge Sheely after  
you

21 spoke with Osenkarski and Graham to receive  
their

22 recommendations?

23 A. I have no memory of any subsequent meeting with  
24 Judge Sheely.

25 Q. Do you know whether Judge Sheely received a  
copy



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73 1 of what has been marked as  
Deposition Number 3?

2 MR. THOMAS: Objection to form. Misstates  
3 the testimony.

4 A. I did not give him a copy of that Deposition  
5 Number 3. If he received it, it came from  
6 somebody else.

7 BY MS. WALLET:

8 Q. Did you give Deposition Number 3 to anyone  
other

9 than Horace A. Johnson?

10 A. I never gave Deposition Number 3 to Horace A.  
11 Johnson.

12 Q. After you did Deposition Number 3, what did you  
do  
13 with it?

14 A. Stuck it in the file.

15 Q. Did you give it to Dan Hartnett?

16 A. No.

17 Q. Did Dan Hartnett ever receive anything that  
could

18 be considered a written report from you of your  
19 investigation?

20 A. Not directly from me.

21 Q. Do you believe that Mr. Johnson gave a written

22 report to Mr. Hartnett?

23 A. I have come to learn that there was a letter  
from

24 Mr. Johnson to Mr. Hartnett -- strike that.

Can I

25 see that letter? I'd just like to see that  
first

Exam./Wallet - DeLuce

74 1 before I make any comments.

2 Q. Let the record reflect that I'm handing what's  
3 been marked as Deposition Number 4.

4 A. I have come to learn that a letter was sent by  
Mr.

5 Johnson to Mr. Hartnett on June 26th, 1997.

6 Q. And how did you come to that knowledge?

7 A. I was told by Mr. Johnson at some subsequent  
point

8 that he retrieved the report from my file and  
9 delivered it to the county. Who he delivered  
it

10 to, I was not certain. I saw this letter of  
June

11 26th, 1997, just recently.

12 Q. Do you know what copies were attached or  
enclosed

13 with the June 26th, 1997, letter marked  
Deposition

14 4?

15 A. No, I do not.

16 Q. So, today you are not sure what went to Dan  
17 Hartnett except for this letter dated June  
26th,

18 1997?

19 MR. THOMAS: Objection to the form. He's  
not  
20 even sure -- you can't put him in a position to  
21 tell you what went to Hartnett. All he can say  
is  
22 he has seen the letter that was addressed to  
him.  
23 He would have no way of knowing whether  
Hartnett  
24 got it or not.  
25 A. I'm sorry, your question is?

Exam./Wallet - DeLuce

75 1 BY MS. WALLET:

2 Q. Do you know whether anything other than  
Deposition

3 Number 4 went to Dan Hartnett?

4 A. I don't know what went to Dan Hartnett other  
5 than -- I don't even know that Deposition  
Number 4

6 went to Daniel Hartnett. I presume it does  
7 because I see a letter addressed to him with  
the

8 date with attachments, but I don't know that  
that

9 went to him. I have no recollection of a  
10 discussion with Mr. Hartnett that he received  
this

11 letter.

12 Q. Did you have any discussions with Mr. Johnson  
13 after June 26th, 1997, relative to this  
letter?

14 A. Yes -- no, relative to the letter, no.

15 Q. Did you have any discussions with Mr.  
Johnson

16 relative to this investigation after June  
26th,

17 1997?

18 A. I'm sure that I did.

19 Q. Do you recall the substance of any of those  
20 discussions?

21 A. I believe they are confidential between two  
22 attorneys in the same law firm.

23 Q. When did you learn that any action had been  
taken

24 against Gary Graham or Joseph Osenkarski?

25 A. I got a telephone call from Mr. Hartnett  
somewhere

Exam./Wallet - DeLuce

76 1 on or near the 4th of July because I  
was off and

2 he called me at home to tell me what he had  
heard

3 transpired.

4 Q. So, Hartnett calls you at home and what does he  
5 tell you?

6 A. He said that there was a meeting with Judge  
Sheely

7 and Mr. Graham and that his wife was present  
and

8 that Mr. Graham indicated that he had had an  
9 affair or relationship with Barbara Varner and  
10 they discussed that with Judge Sheely and then  
he

11 told me what Judge Sheely did as far as any  
12 disciplinary action regarding that.

13 Q. And what did Hartnett tell you that Sheely  
did?

14 A. My recollection is there was a couple days'  
15 suspension and I can't remember the rest of  
it,

16 that's over six years ago, but I know that  
there

17 was a suspension. Beyond that I don't recall.

18 Q. Do you know who was suspended?

19 A. I believe that Mr. Graham was suspended.

20 Q. Do you know whether Mr. Osenkarski was  
suspended?

21 A. I do not recall that he was, but I'm not  
certain.

22 Q. Do you know whether any disciplinary action  
was

23 taken against Mr. Osenkarski?

24 A. I do not know what Judge Sheely may have done.

25 Q. Did you have any discussions with Mr. Hartnett



Exam./Wallet - DeLuce

77 1 after the July 4th conversation?

2 A. Sure.

3 Q. Relative to this matter?

4 A. Well, certainly we discussed the revelation by  
Mr.

5 Graham and what impact that may have had upon  
our

6 investigation.

7 Q. What do you recall about that discussion?

8 A. Well, I think it's a fact that I think would  
have

9 been relevant for us to be aware of in what we  
10 did. And if you notice the cases that I cited  
in

11 my memorandum, they did not, as I recall, deal  
12 with a situation where the parties had some  
type

13 of relationship. It was simply claims of  
sexual

14 harassment as I recall. I certainly would  
have

15 looked at the situation differently.

16 Q. In what way?

17 A. Well, you're asking me to speculate. I think  
I

18           would have liked to have asked some more  
questions

19           of the parties regarding the matter to get a  
20           better understanding of what transpired, look  
at  
21           the relevant case law and come up with further  
22           recommendations is the way I would have handled  
23           it.

24    Q.     But you were not asked to do that?

25    A.     No.

Exam./Wallet - DeLuce

78 1 Q. Were you asked to do anything after  
June 26th,  
2 1997?

3 A. Continue representing the county on any legal  
4 matters involving this situation which included

--

5 I have no present recollection of when we were  
6 served with the EEOC documents, but I know that  
I  
7 was involved in that.

8 Q. You were not asked to do anything else with  
9 respect to investigating Barbara Varner's  
10 complaint after June 26th, 1997?

11 A. No, in my view the employer made their  
12 determination. The judge decided what was to  
be  
13 done.

14 Q. Did you believe that your investigation was  
15 concluded by June 26th, 1997?

16 MR. THOMAS: June what?

17 MS. WALLET: 26th.

18 A. I believe that it was based on the facts that  
were  
19 given to us to date.

20 BY MS. WALLET:

21 Q. To date meaning today or June 26th of '97?

22 A. June 26th of 1997.

23 Q. In any event, nobody asked you to do anything  
24 after June 26th, 1997?

25 A. No.

Exam./Wallet - DeLuce

79 1 MS. WALLET: Okay, let's take a  
break now.

2 (Lunch recess taken)

3 BY MS. WALLET:

4 Q. Mr. DeLuce, you are certainly still under oath.

5 You understand that?

6 A. I understand that.

7 Q. Would you tell me, please, what recommendation  
you

8 made to Judge Sheely as a result of your

9 investigation?

10 A. I made no recommendation to Judge Sheely. I  
11 indicated to him that I had some concerns with  
12 what I saw -- or what I heard from the  
witnesses,

13 not only from there was some concern about

14 potential sexual harassment, but also  
management

15 issues, and I felt that some action needed to  
be

16 taken and movement of personnel also needed to  
be

17 done in order to terminate this matter from a  
18 legal standpoint and also from the employees'  
19 perspective.

20 Q. And when you say from the employees'  
perspective,

21 who are you referring to?

22 A. Well, I think my report reflects that there was  
23 some issues by many members of the department  
with

24 management of the department and there were

25 concerns and I thought from a personnel  
standpoint

Exam./Wallet - DeLuce

80 1                   that somebody needed to address  
those issues as

2                   well.

3     Q.     And did you make any specific recommendations  
4            about what should be done?

5     A.     To Judge Sheely, no, I did not.

6     Q.     Was there anything else that you recommended to  
7            Judge Sheely that you haven't just told me?

8     A.     No.

9                   MS. WILLIAMS: I'm going to object to the  
10            form of that question. I think his testimony  
was

11           that he made no recommendations. So, I would  
12           object to your characterization as a  
13           recommendation.

14    BY MS. WALLET:

15    Q.     Did you make any recommendations at all as a  
16            result of your investigation to Judge Hoffer?

17    A.     No.

18    Q.     Did you make any recommendations at all to  
anyone

19           with the County of Cumberland?

20    A.     I did indicate to the county commissioners and  
Mr.

21           Ward that they should urge the judge to take

some

22           action based upon what we had heard from the  
23           witnesses and my concerns would be to both the  
24           court and what my concerns would be to my  
client,  
25           the county, and I think they are stated in my



Exam./Wallet - DeLuce

81 1 Deposition Exhibit Number 2.

2 Q. So, what is contained in Deposition Exhibit  
Number

3 2 on Page 24 and 25 is your summary of what you  
4 told the county commissioners?

5 MR. THOMAS: I have an objection to the  
form

6 in terms of date. I think my recollection is  
that

7 the meeting with the commissioners was after  
the

8 later report.

9 A. It was after the later report and my  
recollection

10 is that there should be some action taken, but  
of

11 course the county could not do it. They were  
12 going to go talk to Judge Sheely, but I felt  
there

13 should at least be a suspension, sensitivity  
14 training, maybe a management change and  
monitoring

15 of the situation because of the concerns that  
Mr.

16 Hartnett and I had after talking to the

witnesses.

17 But we didn't give anything specific. We gave  
18 them a range of what can be done and then they  
19 were going to take that in some manner and go  
see

20 Judge Sheely.

21 BY MS. WALLET:

22 Q. They meaning?

23 A. The commissioners and Mr. Ward.

24 Q. Do you know whether that occurred?

25 A. I was not personally present.

Exam./Wallet - DeLuce

82 1 Q. Do you have any information to  
believe that that  
2 occurred?

3 A. I believe that there was a meeting. Who  
attended  
4 and what was said, I do not know.

5 Q. Now, you said your recommendation of action  
6 included suspension. Suspension of whom?

7 A. The supervisors involved with this situation.

8 Q. Specifically?

9 A. Mr. Osenkarski and Mr. Graham.

10 Q. And did you make a recommendation even though  
it  
11 be a range for what those suspensions should  
be?

12 A. I gave no range.

13 Q. Did you recommend specifically what kind of  
14 management change you would recommend?

15 A. I felt that based on what the witnesses had  
told

16 me Joe was not running the day-to-day  
operations

17 of the department and they needed somebody in  
18 there to oversee and do that and keep an eye on  
19 the situation. And I suggested that they

consider

20 talking to Mr. Osenkarski about retiring since

he

21 was vested in his retirement plan -- but you

have

22 to understand the county could not do that,

that

23 would have been up to the judge -- and then

have

24 somebody else maybe supervise the department

and

25 Mr. Graham.

Exam./Wallet - DeLuce

83 1 Q. Someone could supervise Mr. Graham?

2 A. Yes.

3 Q. Did you recommend any change in physical  
location

4 for either Mr. Osenkarski or Mr. Graham?

5 A. Specifically, no, because I've never seen the  
6 department myself.

7 Q. Did you recommend that Graham be separated from  
8 Varner?

9 A. Yes.

10 Q. What was the nature of your recommendation?

11 A. Well, I felt that it was a situation that would  
12 continue and in order to stop that for both  
13 parties involved and to remove the allegation  
of

14 sexual harassment that there should be some  
15 separation of the parties in the workplace from  
16 supervisory control.

17 Q. Why did you think the situation would continue?

18 A. As I said, the judge who has ultimate  
supervision

19 is busy, he's trying cases, he's in a different  
20 floor. This is not something that he is able  
to

21 stay close to from what I could tell and it was

22 clear from the witnesses and even Mr.

Osenkarski

23 that he was not into handling the day-to-day

24 activities.

25 Q. What monitoring did you have in mind?

Exam./Wallet - DeLuce

84 1 A. I had none in mind that I could specify to  
you.

2 Q. I believe that was one of your list of  
3 recommendations?

4 A. Yeah, but it's not -- I think that's for the  
judge

5 to decide that, not me.

6 Q. Did you make any recommendation with regard to  
the

7 what I'll call seniority issue, do you  
understand

8 what I mean by the seniority issue?

9 A. I have no present recollection of making a  
10 recommendation regarding the seniority  
issue.

11 Q. Did you believe that the county could issue  
any

12 regulations or policies with regard to how  
13 seniority was treated?

14 MR. ADAMS: Objection. How would this  
15 witness be qualified to answer that question?

16 MS. WALLET: He represents the county, so  
he

17 says.

18 MR. ADAMS: Are you asking him to

interpret a

19 policy by the county?

20 MS. WALLET: Is that an objection?

21 MR. ADAMS: Objection based on the fact  
that

22 he's not qualified to respond based on the

23 policies.

24 BY MS. WALLET:

25 Q. You may answer the question.



Exam./Wallet - DeLuce

85 1 A. Should I answer the question?

2 MR. THOMAS: Yeah.

3 A. My understanding was that these type of  
policies

4 were developed by the judge and not the county

5 and, in fact, I was told that employees who  
were

6 dissatisfied with the policy went to see the  
judge

7 to give their viewpoint. This was not in my  
view

8 within the county's domain.

9 BY MS. WALLET:

10 Q. Did you believe the county had any ability to  
11 remedy any of this situation?

12 MR. THOMAS: Objection to the form.

13 MR. ADAMS: What situation?

14 MS. WALLET: Complaints brought by Ms.  
15 Varner.

16 A. No.

17 BY MS. WALLET:

18 Q. No, you believe that they had no ability to  
19 remedy?

20 A. That's correct.

21 Q. Who did you believe had the ability to remedy?

22 A. If any changes were to be made or a remedy was  
23 needed, it would be up to the president judge  
who  
24 controlled that department, not the county.  
25 Q. Why did you bother to make recommendations if  
you

Exam./Wallet - DeLuce

86 1                    didn't think that the county had any  
ability to

2                    implement them?

3     A.            Who are you referring that those  
recommendations

4                    were made to?

5     Q.            Well, let's start with Deposition 2.

6     A.            First of all, you have to understand that  
7                    Deposition 2 was a work in process. It evolved  
8                    into Deposition 3, just so you understand  
that.

9                    I'm sorry, repeat your question, please.

10    Q.            Why did you bother to make recommendations if  
you

11                   didn't think the county had any ability to  
12                   implement them?

13    A.            Because the county certainly had the ability  
to

14                   recommend those to the president judge and  
they

15                   wanted something from their legal counsel as  
to

16                   what the options were.

17    Q.            Did you consider that you were an investigator  
for

18 the court?

19 A. I considered myself as an attorney for the  
county

20 who was conducting an investigation.

21 Q. For whom?

22 A. The investigation in my view was at the request  
of

23 the president judge and with his authority. It

24 was done though by the county personnel office  
and

25 myself.

Exam./Wallet - DeLuce

87 1 Q. Did you consider yourself to be the  
president

2 judge's lawyer?

3 A. No.

4 Q. Why did you believe that you were investigating  
at

5 the request of the president judge?

6 A. Because I knew very early on that the county  
had

7 no authority to make personnel changes in the  
8 probation department.

9 Q. Did the president judge give you any direction  
10 with regard to conducting an investigation into  
11 the allegations made by Barbara Varner?

12 A. Not that I can recall except for the one  
meeting

13 we had, which I've already explained my  
14 recollection of what transpired.

15 Q. To the best of your knowledge, did the court  
pay

16 for any of your investigative activity?

17 A. I didn't see the checks when payments were  
made,

18 but to the best of my knowledge it was paid by  
the

19 county.

20 Q. Now, this memo marked Deposition 2 was actually  
21 from you to your would you call him your  
superior,

22 Horace Johnson?

23 A. I would call him my partner at the time.

24 Q. Did Mr. Johnson direct you to write this memo  
to  
25 him as opposed to someone else?

Exam./Wallet - DeLuce

88 1 A. I can't recall what he may have  
directed at that

2 time. I obviously -- the way I drafted it, it  
was

3 addressed to him, but I never physically gave  
it

4 to him.

5 Q. How did he get it?

6 A. I presume he took it out of the file.

7 Q. And you don't know when that happened?

8 A. I suspect it was -- I believe it was during the  
9 last week of June of 1997.

10 Q. Why didn't you write a report directed to Dan  
11 Hartnett?

12 A. Because these were my own impressions and my  
own

13 thoughts as an attorney after talking to  
witnesses

14 and doing my own research. I did not prepare  
this

15 with the intention of giving it to my client.

I

16 would have done it differently.

17 Q. Did you consider yourself to be an independent  
18 investigator?

19 A. What do you mean by independent?

20 MR. THOMAS: Objection to form.

21 BY MS. WALLET:

22 Q. Independent to the parties involved.

23 A. No, I felt myself as counsel for the county.

24 Q. What caused you to change what was Roman

Numeral

25 Number IV, Recommendation, in the April 30, '97



Exam./Wallet - DeLuce

89 1 memo to Attorney Impressions in the  
June 4 '97

2 memo marked Deposition 3?

3 A. As the process continued and the interviews  
4 continued, I became less and less concerned  
with  
5 the sexual harassment and more concerned with  
a  
6 management personnel issue in the department  
and  
7 that is why I recall making changes to my  
8 recommendations.

9 Q. Did you believe that the change from  
10 recommendation to attorney impressions would  
11 somehow protect this document from future  
12 disclosure?

13 A. I typically put that on my file memorandums  
that I  
14 want to keep for my future reference and  
because  
15 they are for me. If they are intended for the  
16 client, I would do it differently.

17 Q. So, you really never intended to conduct an  
18 investigation, prepare a report and submit that  
19 report to someone?

20 MR. THOMAS: Objection to the form.

21 A. If my client had asked me for a written report,

I

22 would discuss that with them, and if they

wanted

23 that, I certainly would give them a written

24 report.

25 BY MS. WALLET:

Exam./Wallet - DeLuce

90 1 Q. And they never asked you for that?

2 A. I have no recollection of Mr. Hartnett asking  
me  
3 for a written report.

4 Q. When you say if my client had asked me for a  
5 written report, you are speaking to someone in  
6 authority with the County of Cumberland?

7 A. Well, Mr. Hartnett would have been sufficient  
for  
8 me or the chief clerk or the commissioners.

9 Q. And not one of those three entities ever asked  
you  
10 for a report?

11 A. I have no recollection of any of them asking me  
12 for a written report.

13 Q. Would you look, please, at Deposition Exhibit  
3,  
14 the first page? You write at the bottom of the  
15 first full paragraph: "The written complaint  
from

16 Barbara Varner as well as her proposed solution  
to

17 the problem were submitted in writing at my  
18 request." Were those the written complaints  
that

19           were referenced in the prior sentence?

20    A.     Yes.

21    Q.     So, you had in your possession the complaint  
that

22           Barbara Varner had written to Dan Hartnett  
dated

23           April 28, 1997?

24    A.     Yes.

25    Q.     Did you have anything else in writing from her?

Exam./Wallet - DeLuce

91 1 A. I don't know. I can't recall.

2 Q. Did you believe that you had a satisfactory  
3 description of Ms. Varner's complaint prior to  
4 your engaging in the interview of witnesses?

5 MR. MacMAIN: Objection. Do you mean  
based

6 on the writing or you said the first thing he  
said

7 was interview her or--

8 MS. WALLET: Based on the writing.

9 A. I'm not sure what you mean by satisfactory.  
She

10 provided us verbally and then in writing her  
11 allegations and then we embarked upon talking  
to

12 her and witnesses that she either told us or  
that

13 we thought had relevant knowledge of these  
14 incidents to try and determine the facts.

15 BY MS. WALLET:

16 Q. My question was did you believe that you  
17 sufficiently understood what Barbara Varner was  
18 complaining about in order to engage in some  
19 investigation of those complaints?

20 MR. THOMAS: Objection to form. You may

21           answer.

22    A.       Yes.

23    BY MS. WALLET:

24    Q.       What was your understanding of what Barbara  
Varner

25           was complaining about?

Exam./Wallet - DeLuce

92 1           A.           That she was working in a hostile  
environment, it

2           was made hostile by her immediate supervisor,  
Mr.

3           Graham, and that he treated her differently  
than

4           others.

5    Q.       And did she indicate that she believed she was  
6           treated differently because of her gender?

7    A.       I don't have the written complaint in front of  
me

8           so I don't know what's in there. If you're  
asking

9           me to comment about whether that's in there or  
10          not, I don't know. I certainly recall  
verbally

11          that her concern was that she was treated  
12          differently because of her gender. I don't  
know

13          whether it's in the written complaint.

14   Q.       Did she have any complaints about Joseph  
15          Osenkowski and his treatment of her because of  
her  
16          gender?

17   A.       Without looking at her complaint and my notes,

I

18           can't recall that independently. But certainly

19           her complaint was against him as well as Mr.

20           Graham, that I do recall.

21    Q.     Did she complain to you about Joseph

Osenkowski's

22           failure to stop what she considered to be the

23           harassment by Gary Graham?

24    A.     Yes.

25    Q.     Did you understand her complaint to be that she



Exam./Wallet - DeLuce

93 1                                was treated differently with regard  
to seniority

2                                because of her gender?

3     A.            Did I understand that was her complaint that  
she

4                                felt she was treated differently because of her  
5                                gender and seniority?

6     Q.            Yeah.

7     A.            I think that was her complaint. That doesn't  
mean

8                                that I necessarily agreed with that.

9     Q.            I understand. I'm just asking you what you  
10                               understood to be the complaint that you were  
11                               investigating. Did you understand Ms. Varner's  
12                               complaint to be that she had been treated  
13                               differently after she had complained about Mr.  
14                               Graham's treatment of her?

15   A.            She expressed to us a concern for retaliation,  
16                               yes.

17   Q.            Did you understand her complaint to be that she  
18                               was treated differently because of her age?

19   A.            I do not recall any age basis to her claims. I  
20                               qualify that and all of this line of questions  
21                               with the fact I don't have the written  
complaint

22           in front of me.

23    Q.     If it was in the written complaint, you believe  
24           that you had a duty to investigate?

25    A.     Yes.

Exam./Wallet - DeLuce

94 1 Q. Were there any complaints in this written  
2 complaint form dated April 28, 1997, that you  
3 believed you did not have a duty to  
investigate?

4 A. Can I see the complaint?

5 Q. Maybe.

6 MR. THOMAS: Note my objection to the  
form.

7 MS. WALLET: Your objection being to your  
8 witness asking for something?

9 MR. THOMAS: No, to the form of your prior  
10 question.

11 BY MS. WALLET:

12 Q. I'd like to show you what has previously been  
13 marked in this matter as Varner Deposition  
Number

14 1.

15 A. The document you handed to me is dated April  
25,  
16 1997. I don't know why my memorandum refers to  
17 April 28th, 1997. I presume it's the same  
18 document, but I do not know that for certain.

I

19 see in her complaint she says she feels she  
has

20           been discriminated or harassed in relation to  
her

21           age, sex and marital status. I'm sorry, your  
22           question is?

23    Q.    I don't remember exactly what my question was,  
but

24           let me ask a different question. Now that  
you've

25           had a chance to review Varner Deposition Number  
1,

Exam./Wallet - DeLuce

95 1 do you believe that to be the  
writing that you had

2 in your possession at the time you engaged in  
the

3 investigation of Ms. Varner's complaints?

4 A. It looks like the document that I had  
previously

5 seen.

6 Q. Is it the document that you referenced in  
7 Paragraph 1 of Deposition Number 3?

8 A. Again, I believe it is, but there are different  
9 dates.

10 MR. THOMAS: They deviate by a day.

11 A. Actually April 28th is what my memo says and  
this

12 is dated April 25th.

13 MR. THOMAS: I'm sorry, three days.

14 A. I don't know whether it is the -- I don't know  
15 what I'm referring to, whether it's the date  
it

16 was given to me or the actual date of the  
memo.

17 BY MS. WALLET:

18 Q. Mr. DeLuce, if we had your original file would  
it

19           have attached to Deposition Number 3 or some  
20           version of Deposition Number 3 documents that  
you

21           had to work with at the start of your  
22           investigation?

23    A.     I believe a memorandum from Barbara Varner  
would

24           be in the file.  Whether it's attached to this  
25           document, I don't know.  I can tell you I do  
not

Exam./Wallet - DeLuce

96 1                    have in my file Deposition Exhibit Number

3. I

2                    only have in my file Deposition Exhibit Number

2.

3 Q.            Could I have Varner 1 back, please?

4 A.            Sure.

5 Q.            Now let me ask you, sir, did you come to any  
6                    conclusions regarding whether or not there was

a

7                    hostile environment for Barbara Varner when  
you

8                    conducted your investigation?

9                    MR. ADAMS: Objection, calls for a  
legal

10                  conclusion I would think and it's  
inappropriate

11                  for this witness.

12                  MR. THOMAS: Objection to the form. You  
may

13                  answer.

14 A.            I felt that at times there was a hostile  
15                    environment, especially as perceived by the  
16                    employee.

17 BY MS. WALLET:

18 Q.            And when you say the employee, you mean Barbara

19 Varner?

20 A. Barbara Varner.

21 Q. Did you find any evidence that other  
individuals

22 in the office believed that Barbara Varner was  
23 subjected to a hostile environment?

24 MR. ADAMS: Same objection.

25 MR. THOMAS: Same objection. Any  
employees?



Exam./Wallet - DeLuce

97 1 MS. WALLET: Any employees.

2 A. I think what's reflected in my report, who and  
3 what they said to me, you can make your own  
4 conclusions from what they said.

5 BY MS. WALLET:

6 Q. Did any employees confirm the allegations of  
7 Barbara Varner regarding hostile environment?

8 A. Yes.

9 Q. Which employees?

10 A. You want me to go through the report and  
specify

11 them? I think my report speaks for itself.

I

12 have no present recollection and, in fact,  
would

13 not recognize most of those people if they  
walked

14 in this room today.

15 Q. Did you reach any conclusions as to whether or  
not

16 Joseph Osenkarski engaged in treatment of Ms.  
17 Varner differently because of her gender?

18 MR. ADAMS: Same objection.

19 MR. THOMAS: For his conclusion?

20 MS. WALLET: Yeah.

21 A. I can't recall. I think what you're asking me  
22 is

23 did I conclude whether Mr. Osenkowski treated  
24 her

25 differently or engaged in sexual harassment

because she was a woman?

BY MS. WALLET:

Exam./Wallet - DeLuce

98 1 Q. Well, I asked you treated  
differently.

2 A. I think my report speaks for itself. My  
3 recollection now is only what I see in here and  
4 I'm going to stick by what I said in my report  
5 because that was contemporaneous with the  
6 investigation.

7 Q. So that any of the facts that you would testify  
to  
8 now have been, shall we say, impaired by the  
9 passage of time?

10 A. Yes.

11 Q. So, you believe the best evidence of what you  
12 concluded at the time is contained in

Deposition 2

13 and 3?

14 A. Yes.

15 MR. THOMAS: With the caveat that he's  
16 already told you earlier in his testimony  
today

17 that had he known about a consensual affair,  
his

18 research, investigation, conclusions may have  
been

19 different.

20 BY MS. WALLET:

21 Q. At the time did you believe that there may be  
22 retaliation against Barbara Varner because of  
her  
23 complaints?

24 MR. THOMAS: Present tense, past tense,  
25 future tense?

Exam./Wallet - DeLuce

99 1 BY MS. WALLET.

2 Q. At the time meaning at the time that you wrote  
3 Deposition 2 and 3.

4 A. My recollection is that my report indicates I  
had  
5 some concerns about retaliation.

6 Q. Why did you believe there might be some  
7 retaliation against Barbara Varner?

8 A. Because of the information given to me by other  
9 employees that's indicated in my report.

10 Q. The information that people told you Gary  
Graham  
11 was prone to punish people?

12 MR. THOMAS: Objection to the form. You  
may  
13 answer.

14 A. I can't recall if that's the exact words, but I  
15 believe there is some language in there that I  
16 quoted from witnesses regarding that topic.

17 BY MS. WALLET:

18 Q. Did you find those witnesses to be credible?

19 MR. THOMAS: Which witnesses?

20 A. Yeah. I guess the witnesses dealing with the  
21 concern of retaliation?

22 BY MS. WALLET:

23 Q. Correct.

24 A. I did at the time.

25 Q. Mr. DeLuce, in your experience did you find it

Exam./Wallet - DeLuce

100 1 unusual that the court would ask you  
to go back to

2 Gary Graham and Joseph Osenkowski and ask them  
3 what ought to be done in response to Ms.

Varner's

4 complaint?

5 A. When you say did I find it unusual, if you're  
6 asking me is how would I have handled it,  
that's a

7 different question. I think that decision of  
how

8 to handle it was up to the president judge, not  
9 me. I mean you're asking me to speculate why  
he

10 did that and that's what I would be doing.

All I

11 can say is he was the supervisor and I think  
he

12 wanted to hear what their suggestions were on  
how

13 to resolve it.

14 Q. Had you ever done a sexual discrimination or  
15 sexual harassment investigation prior to  
this

16 time?

17 MR. THOMAS: Asked and answered.

Don't

18 answer it.

19 BY MS. WALLET:

20 Q. Have you done any since?

21 A. I have assisted clients and my recollection is  
22 that I did join in with a client's personnel  
23 director on obtaining information.

24 Q. Did you ever share any portions of Deposition  
25 Exhibit 2 with Barbara Varner?



Exam./Wallet - DeLuce

101 1 A. I have no recollection of sharing.

When you say

2 portions of it, do you mean the physical report  
or

3 the content?

4 Q. The physical report.

5 A. I have no recollection of sharing this report  
with

6 Barbara Varner.

7 Q. Do you have any recollection of sharing any  
8 portions of the physical report of Deposition 3  
9 with Barbara Varner?

10 A. I have no recollection of doing that.

11 Q. Did you share any of the portions of these  
reports

12 with Gary Graham?

13 A. Again, do you mean the content or the physical  
14 document?

15 Q. Physical document.

16 A. I have no recollection of showing him any of  
this,

17 either memorandum.

18 Q. Did you share any of the document or portions  
of

19 the document Deposition 2 or Deposition 3 with

20 Joseph Osenkowski?

21 A. The physical document I have no recollection  
22 of

23 doing that.

24 Q. However, you did share with both of them the  
25 findings, or at least some of the findings and  
direction facts contained in those reports at the

Exam./Wallet - DeLuce

102 1 of Judge Sheely?

2 MR. THOMAS: Objection to the form.

3 A. We shared with both Mr. Osenkarski and Mr.  
Graham

4 statements and allegations, allegations made by  
5 Barbara Varner and statements made by certain  
6 witnesses as to what happened or what they saw

to

7 get his version and confront him with the  
8 allegations.

9 BY MS. WALLET:

10 Q. And you did that at the direction of Judge  
Sheely?

11 A. The answer is in my view, yes, as part of the  
12 investigation.

13 Q. Did you share any of the facts or information  
14 contained in your report -- let's say reports,  
I'm

15 referring now to Deposition 2 and Deposition 3,  
16 with Barbara Varner after you met with Judge  
17 Sheely?

18 A. I can't recall.

19 Q. Did Judge Sheely tell you to go back to Barbara  
20 Varner and ask her what her suggestions were?

21 A. I don't recall him doing that.

22 Q. Did you ever have any discussions with counsel  
for

23 Gary Graham in or about the April to June 1997  
24 time frame?

25 A. I recall being contacted by Attorney David  
Foster.

Exam./Wallet - DeLuce

103 1 I recall that he indicated he was  
representing

2 Gary Graham. I cannot recall the substance of  
the

3 conversations.

4 Q. How did he know to call you?

5 A. I suspect Mr. Graham, but I -- I didn't -- I  
mean

6 I didn't contact him.

7 Q. Do you remember what Mr. Foster wanted you to  
do?

8 A. I don't recall the substance of our  
conversations.

9 Q. You had no notes of those -- I'm sorry, I  
didn't

10 mean to say those.

11 A. My recollection is I have no notes of it and I  
12 don't know if there was one or a couple or how  
13 many, but I do know that he contacted me.

14 Q. Do you know whether Mr. Foster told you any  
facts

15 relating to the relationship between Ms.  
Varner

16 and Mr. Graham?

17 A. I have no recollection of him discussing facts

18 with me.

19 Q. Did Mr. Foster at any time tell you that Gary

20 Graham had had a sexual relationship with

Barbara

21 Varner?

22 A. I don't recall him ever saying that to me. I

23 think that's something I probably would have

24 remembered.

25 Q. Did you have any conversations with Debra

Wallet

Exam./Wallet - DeLuce

104 1                    regarding your investigation into  
the complaints

2                    of Ms. Varner?

3     A.            I can't recall. I may have. I can't recall.

I

4                    know that we spoke at a certain point in time,  
but

5                    I cannot tell you when that was.

6     Q.            Do you remember any of the substance of the  
7                    conversation with Debra Wallet?

8     A.            Are you talking April to June of 1997?

9     Q.            Or any other time.

10    A.            I know that we had discussions regarding how to  
11                    resolve or settle the issue or the -- I suspect  
it

12                    was after the EEOC complaint was filed because  
I

13                    know that I believe that we had those  
discussions.

14                    Exact terms, time, I can't recall.

15    Q.            Did you initiate those calls or did Debra  
Wallet?

16    A.            I can't recall.

17    Q.            During your interviews with the individuals  
listed

18 in Deposition 2 and 3, did you give any  
19 assurances

20 to those individuals that what they told you  
21 would

22 be kept confidential?

23 A. I can't recall specifically. I do know that  
24 some

25 of the witnesses had concerns that what they  
were

telling us would get back to their supervisors.

And Mr. Hartnett and I were conscious of that

issue, but what assurances I gave I cannot  
recall.



Exam./Wallet - DeLuce

105 1 Q. Do you believe that you told anybody  
that they

2 could feel free to talk to you because the

3 information they gave you would not be  
revealed?

4 A. You are asking me do I believe I said that and  
you

5 are asking me to speculate what I may have said

6 six and a half years ago and I cannot recall  
what

7 I said.

8 Q. Did you have any kind of a script that you used  
9 when you began each of the interviews?

10 MR. THOMAS: Objection, asked and  
answered.

11 Don't answer it.

12 BY MS. WALLET:

13 Q. Did you have any mental list of what you would  
14 tell each of the individuals that you  
interviewed?

15 A. Should I answer it?

16 MR. THOMAS: Sure.

17 A. I'm sure that we did have some type of thought  
18 processes as to what we were going to ask the  
19 witnesses when they came to that conference

room.

20 BY MS. WALLET:

21 Q. What did you tell these witnesses that you were  
22 there to do?

23 A. I can't specifically recall what I said to  
them.

24 The witnesses that Barb asked us to interview  
and

25 said they would be willing to talk to us, I'm  
sure

Exam./Wallet - DeLuce

106 1                    they knew what was going on. The  
other witnesses

2                    that we wanted to talk to, I think by the time  
we

3                    got to them word had spread through the  
department

4                    and they had a good idea of what the heck was  
5                    going on. I can't recall specifically what  
we

6                    told them.

7    Q.            Did you tell these witnesses that you were  
8                    investigating allegations by Barbara Varner  
9                    against individuals in the department?

10   A.            I can't recall exactly what I said to them. I  
11                    can't recall exactly what I said to them.

12   Q.            Did you give any of the individuals that you  
13                    interviewed any assurance that there would be  
no

14                    retaliation against them as a result of their  
15                    talking with you?

16   A.            Didn't you already ask me that? I think I  
recall

17                    that being a concern, especially with some of  
the

18                    witnesses who came to see us. And what I

would

19           have explained to them was that if there was  
any,

20           they needed to report it, because that should  
not

21           be going on. What exactly I said to them I  
cannot

22           recall, but I can tell you that's the way I  
would

23           have answered their concerns.

24    Q.     Did you tell them who they should report it to?

25    A.     I believe -- no, I don't recall that we did

Exam./Wallet - DeLuce

107 1 specifically, but we may have. I  
can't remember

2 whether we told them to report it to Mr.  
Hartnett

3 or to the judge, but we would have told them to  
4 report it.

5 Q. Was there a sexual harassment policy in place  
in

6 or about April through June of 1997?

7 A. I don't have it in front of me, but my  
8 recollection is that there was.

9 Q. Do you know whether that policy was issued by  
the  
10 County or by the County of Cumberland?

11 MR. THOMAS: Objection to the form. You  
may  
12 answer.

13 A. I don't know who issued it. I don't know who  
14 issued it. My recollection is that it was part  
of

15 the -- I'm not sure. I'm speculating.

16 BY MS. WALLET:

17 Q. Did you have a copy of a written policy at the  
18 time that you began your investigation?

19 A. My recollection is that I asked for it and

20 something was provided to me.

21 Q. Do you know whether or not that policy was  
22 contained in your file?

23 A. I have to tell you that I don't recall seeing  
it

24 in there, but it may be in there.

25 MS. WALLET: Mr. Thomas, I'm going to ask  
you

Exam./Wallet - DeLuce

108 1 to make available to me the entire  
investigative

2 file.

3 MR. THOMAS: We will certainly obtain his  
4 original and review it and take your request  
under

5 advisement.

6 MS. WALLET: I take it that means there's  
no

7 assurance I'm going to get to look at it?

8 MR. THOMAS: That's what that means. I  
will

9 review it to see whether or not you've been  
10 provided with the things that we believe are  
not

11 protected. If there are things that I believe  
are

12 protected, we will provide you with a privilege  
13 log.

14 MS. WALLET: With a privilege?

15 MR. THOMAS: Privilege log.

16 MS. WALLET: Log, thank you. And could I  
ask

17 that you do that within a week?

18 MR. THOMAS: Sure.

19 MS. WALLET: Thank you, Mr. DeLuce.

That's

20 all of the questions I have for you today.

21 MR. THOMAS: I would ask that you fax me a

22 letter today or Monday reminding me to do that

so

23 that it gets done.

24 EXAMINATION

25 BY MR. MacMAIN:



Exam./MacMain - DeLuce

109 1 Q. Mr. DeLuce, my name is David

MacMain. I represent

2 Mr. Graham and I had some things that I want to

3 ask you about that you have been asked about in

4 follow-up and some additional areas. Now, you  
had

5 said earlier that you interviewed some  
witnesses

6 that had been suggested to you by Ms. Varner.

7 Correct?

8 A. Correct.

9 Q. Did you ask Mr. Graham when you interviewed him  
10 for witnesses that he might suggest you  
interview?

11 A. Yes, I asked him to give me anything he could  
to

12 help me in addressing this, especially if he  
said

13 the allegations were untrue or false.

14 Q. And do you recall what witnesses, the names of  
any

15 of the witnesses that he provided to you to  
16 interview?

17 A. Certainly they are in the report. Whether I  
said

18 in here Gary or Joe told me to interview X, I  
19 don't think I did that. He gave me names. I  
20 cannot presently recall who they were.

21 Q. Now, you did not interview everybody in the  
22 probation department. Correct?

23 A. I don't know that. I don't think that we did,  
but

24 I don't know that for a fact.

25 Q. Anybody that you would have interviewed would  
be

Exam./MacMain - DeLuce

110 1 contained in your notes which was  
DeLuce 1.

2 Correct?

3 A. Correct.

4 Q. So, if someone had been interviewed, their name  
5 would be reflected in the interview notes  
6 somewhere in Number 1?

7 A. That is my recollection.

8 Q. Now, you said you never physically had been in  
the  
9 office, the probation office?

10 A. During the time that this was going on the  
answer

11 is no. I had been in the probation office  
prior

12 to that when I did some criminal work. Where  
13 their offices are located I have no -- I  
didn't

14 have any knowledge. I mean I knew they were  
on

15 the second floor, but that's all I knew.

16 Q. You said these interviews were conducted with  
both

17 yourself and Mr. Hartnett. Was there any  
breakout

18           of who asked the questions, for example, did  
you  
19           ask the majority of the questions, did Mr.  
20           Hartnett, was it--  
21    A.     We both asked the questions and I would have  
22           viewed it as a team approach. He asked a lot  
of  
23           questions. He was experienced in his field and  
he  
24           asked a lot of questions and I mean he was part  
of  
25           the process. We both did.

Exam./MacMain - DeLuce

111 1 Q. Do you know if Mr. Hartnett took any  
notes? We

2 have your notes here.

3 A. You'll have to ask him. I don't have his  
notes.

4 Q. I'm looking at DeLuce 2.

5 A. Okay.

6 Q. I want to go through some of the documents and  
ask

7 you select questions about some things. Second  
8 paragraph about four lines down it says Graham  
and

9 Varner shared an office?

10 A. Um-hum.

11 Q. Do you know whether or not they ever shared an  
12 office? Where did you get that information  
from I

13 guess would be a better question?

14 A. That came I think from Barbara Varner. I don't  
15 know whether that also came from Gary Graham.

But

16 this looks familiar to me to be part of my  
first

17 interview with Barb Varner.

18 Q. And was it your understanding that they

actually

19           shared a I don't want to say an office, I mean

a

20           specific office where people sit, as opposed to

21           the more general probation office generally?

22    A.     All I know is what I have here is they shared

an

23           office. What type of office or what that

meant,

24           I'm not sure.

25    Q.     Did she tell you how long they had shared an

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112 1 office?

2 A. If it's reflected in my notes, then she did.

3 Q. Did you have any understanding of prior to the  
two

4 of them working together in probation whether  
they

5 worked together while she was located and  
working

6 for a different county office, Children and  
Youth

7 Services?

8 A. Well, I think what it reflects here and in my  
9 notes that they had some contact in their jobs  
by

10 virtue of her being at Children and Youth and  
him

11 being in juvenile probation and they worked  
12 together on certain cases. I recall that's how  
13 they had their connection prior to her moving  
to

14 the probation department.

15 Q. And it was your understanding that her hiring  
in

16 the probation department was actually at the  
17 recommendation of Mr. Graham? I'll cut right

to

18           the chase. I'm looking at DeLuce 2, second  
19           paragraph, it says she was hired as juvenile  
20           probation officer upon the recommendation of  
Mr.

21           Graham.

22    A.     Yes, I thought that was the case, but I wanted  
to

23           find it somewhere.

24    Q.     Sure. And was it your understanding that for a  
25           number of years prior to her hire in the  
probation



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113 1 department they actually worked  
together and took

2 trips together in their respective roles with  
the

3 different departments?

4 A. I recall seeing that in my notes.

5 Q. Do you know whether or not Ms. Varner had ever  
6 lodged any complaints against Mr. Graham  
during

7 that time period?

8 A. To my knowledge, I have no recollection of  
her

9 lodging any such complaints prior to this  
one.

10 Q. Did you as part of your investigation look at  
Mr.

11 Graham's personnel file to see if anybody had  
ever

12 made any type of complaints against him during  
his

13 tenure with the county?

14 A. My recollection is Mr. Hartnett did that.

15 Q. And would it be fair to say that if there had  
been

16 any prior similar complaints against Mr. Graham

17           that that would be reflected somewhere in your  
18           notes or in your report?

19    A.     If that was told to me, it likely would be in  
this  
20           report.

21    Q.     And would it be fair to say the reason it would  
be  
22           in the report is if there had been prior  
23           complaints that would be of some significance  
in  
24           your mind as the investigator?

25    A.     In my mind I would want to know about it and I

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114 1 would want to know what the outcome  
was.

2 Q. And were you aware of whether or not Ms. Varner  
3 had ever made any complaints against any  
employees  
4 prior to this complaint in 1997?

5 A. I was not aware of her making any complaint of  
6 sexual harassment or discrimination while a  
county  
7 employee.

8 Q. Now, you were asked by Ms. Wallet whether or  
not

9 it was your belief that some employees'  
opinion

10 was that there was a hostile environment  
within

11 the office and I think you said some  
employees

12 believed that there may be. Correct?

13 A. Correct. I think that's reflected in my  
report.

14 Q. Were there also employees that felt that there  
was

15 not a hostile environment?

16 A. Correct, and I think that is reflected in my

17 report.

18 Q. People had different personal opinions as to  
the

19 environment of the office?

20 A. Yes.

21 Q. You were asked by Ms. Wallet whether or not  
there

22 was some people you interviewed that expressed

23 some concern about retaliation. Do you  
know

24 whether, in fact, there's been any  
retaliation

25 against any employees in the six years since  
this

Exam./MacMain - DeLuce

115 1 investigation took place?

2 A. I am not aware that there has been. It's not  
been

3 reported to me.

4 Q. DeLuce 2, if you would put that in front of  
you, I

5 just want to ask you about a few references.

6 A. Yes.

7 Q. Turning to Page 12, again, looking at the first  
8 full paragraph, last sentence: "Barb stated  
many

9 times to me that she has no romantic interest  
in

10 Mr. Graham."

11 A. Yes.

12 Q. Do you recall how many times she told you that  
13 during the interviews?

14 A. No, I'm not -- I mean many times. All I can  
say

15 is many times. I know that I asked the  
question

16 of both of them and I'm reasonably certain that

17 Mr. Hartnett did as well. And my

recollection

18 based on what's in the report is both

denied

19 anything.

20 Q. But this statement many times she denied a  
21 romantic interest, do you have any estimate of  
how

22 many times she denied any type of a romantic  
23 interest?

24 A. I cannot give you a count.

25 Q. Did you find it unusual that it would be  
repeated

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116 1 many times to you that she has no  
interest?

2 A. I don't know about unusual. I do recall that  
card

3 that she claimed that he gave to her and my  
4 recollection is that Mr. Graham denied giving  
it

5 to her. I can't quantify many times.

6 Q. Page 13 of the report, looking at the next to  
last

7 full paragraph, the last line. Let's go to my  
8 question before about the concern about  
9 retaliation, you have written: "Barb has not  
10 relayed any facts where retaliation has  
occurred

11 since Brandt met with me." Why did you put  
this

12 line in, what was the significance of this?

13 A. Because I think it follows with the lead-in  
of

14 that paragraph about the reaction of Mr.  
Brandt

15 after he returned from meeting with myself and  
Mr.

16 Hartnett and this is what Barb told us. And

that

17 gets into a whole other story about a previous  
18 incident that he was the key witness where  
someone

19 else lodged a complaint of sexual harassment,  
and

20 I think if you look at my notes what Mr. Brandt  
21 said his work conditions were for the previous  
22 four years and he did not want any part of  
this.

23 Q. Does that statement also relay there's been no  
24 retaliation against Barb since the  
investigation

25 began?



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117 1 A. You are asking me whether I'm saying

Barb is

2 stating that there's been no retaliation

against

3 her or no retaliation against Brandt?

4 Q. Right.

5 A. Both?

6 Q. Both. You've already answered as to Mr.  
Brandt.

7 There was no retaliation as to Mr. Brandt based  
on

8 his interview.

9 A. I didn't clearly word that, but I think I am  
only

10 referring to Mr. Brandt. I'm not referring to  
11 Barb.

12 Q. The next paragraph refers to an interview with  
a

13 Jennifer Crum, a secretary?

14 A. Um-hum.

15 Q. Did you interview any other secretaries in the  
16 office who may have observed or not observed  
the

17 environment in the office at the time?

18 A. My recollection is we interviewed another

person

19           who was not a probation officer, but my  
20           recollection is she was from witness assistance  
or  
21           something like that. I think it's reflected in  
22           the report. I think I tried to designate the  
23           employment of the person who we interviewed.

24    Q.     Would that be Deborah Reitzel?

25    A.     What page is that on?

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118 1 Q. If you turn to DeLuce 1, which are  
your notes,

2 Page 10 of 37.

3 A. Yes.

4 Q. And Deborah Reitzel relayed to you at the  
bottom

5 she never felt uneasy or uncomfortable with  
Gary

6 Graham. It's the very last line, I'm sorry.

7 A. That's my handwriting.

8 Q. So, according to Ms. Reitzel, there was no  
hostile

9 environment that she observed in the office?

10 A. I think what she is saying is towards her.

11 Q. Did you ask her whether or not there was any  
12 hostile environment towards Ms. Varner?

13 A. I believe we asked her about the incident  
several

14 weeks ago at the probation office.

15 Q. The reason I ask, there's nothing reflected in  
16 here that Ms. Reitzel said there was any type  
of

17 hostile environment towards either her or Ms.

18 Varner. I assume if she did, it would be in  
your

19 notes?

20 A. I think she said that she didn't feel uneasy  
and I

21 think she says earlier Barbara Varner was not  
in

22 the group at the counter at the time.

23 MR. THOMAS: Can we take a break for a  
24 minute?

25 MR. MacMAIN: Sure.

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119 1 (Recess taken)

2 BY MR. MacMAIN:

3 Q. Mr. DeLuce, in your report in DeLuce 2, and  
flip

4 that over to Page 6, in there you list a number  
of

5 people that were interviewed and the last line

6 there's a Hank Thielemann who you note was

7 interviewed?

8 A. Yes.

9 Q. I didn't see any reference to him in your  
10 interview notes, nor did I see his name  
mentioned

11 in your report. Do you recall as you sit here

12 whether or not he, in fact, was  
interviewed?

13 A. Mr. Thielemann was interviewed. I know  
Mr.

14 Thielemann because I believe when I did  
criminal

15 work he was a probation officer of a client  
of

16 mine. And I thought I saw reference to Mr.

17 Thielemann. Yeah, here he is. On Page 21  
there's

18 reference to Mr. Thielemann and I thought I saw  
19 file notes with reference to an HT, which would  
20 have been Hank Thielemann. He was one of I  
think

21 the two probation officers that I knew. So, I  
22 know Hank and I know I spoke to him.

23 Q. You believe that's reflected in your notes  
which

24 is DeLuce 1?

25 A. Well, I'm looking in there now to see if I can

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120 1 find it. I'm certain I spoke to  
him. I'm not

2 seeing notes, but--

3 Q. The only reason I ask you is Page 33 of 37 his  
4 initials are in the left-hand margin and it  
looks

5 like it's part of an interview with Deborah  
Green

6 on Page 33 of 37.

7 A. Yeah, I see down about three quarters of the  
way  
8 down?

9 Q. Right.

10 A. Well, it says other guys. I assume it's Sam  
11 Miller, Denny Drachbar and Hank Thielemann not  
12 busy is what she's claiming. There was an  
13 allegation here that Barbara Varner got a  
higher  
14 case load than anybody else.

15 Q. And that was one of the examples given to you  
by  
16 some witnesses as evidence that she was treated  
17 unfairly?

18 A. Yes.

19 Q. And further that was claimed to be evidenced by

20           some of the witnesses that the group of more  
21           senior employees in the department got a  
lighter

22           case load?

23    A.     Yes.

24    Q.     Did you do any investigation to see if, in  
fact,

25           that was true?



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121 1 A. Yes.

2 Q. And was it, in fact, true?

3 A. My recollection is I stated something I thought  
in

4 the report because I saw that. The answer was  
the

5 highest cases were with Barbara Varner and I

6 forget after that. We got a list. We made Mr.

7 Graham and Mr. Osenkowski produce a list and  
we

8 went down the list. And I know that we  
discussed

9 that throughout this process and I thought I  
10 reviewed something on that.

11 Q. Yeah, if you turn to Page 17 of your report.

12 MS. WALLET: Which one?

13 MR. MacMAIN: Of DeLuce 2.

14 A. There we go. Yes, there's a reference in the  
15 first full paragraph.

16 Q. Okay.

17 A. I knew we got statistics.

18 MR. MacMAIN: Let's mark this as DeLuce 5  
I

19 guess we're up to.

20 (DeLuce Deposition Exhibit #5 marked for

21           identification)

22   BY MR. MacMAIN:

23   Q.    On Page 17 of DeLuce 2, the draft or earlier  
24           version of your report, it refers to a memo,  
25           statistics provided April 29th, '97, from

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122 1 Osenkarski. If you turn to the  
first page, this

2 appears to be a cover memo from Joe  
Osenkarski,

3 April 30th. Attached is a list of cases,  
dated

4 April 29th, 1997. Do you see that?

5 A. Um-hum.

6 Q. Is this the memo that was provided to you?

7 A. I don't know. I don't know. This is addressed  
to

8 Dan, I assume that's Dan Hartnett, April 30th.  
I

9 don't know if this is what was given to us or  
not.

10 I can't answer that.

11 Q. If you turn to the second page that has the  
case

12 list on it, you recite in your report that Barb  
13 has the most cases with 45?

14 A. Um-hum.

15 Q. If you look at the last column and add in the  
16 number total and pending, that adds up to 44  
which

17 is almost exactly the number that's cited?

18 MR. THOMAS: Objection. The number is 45

I

19 think.

20 A. 31 and 14 is 45.

21 BY MR. MacMAIN:

22 Q. And then the next number that's given is

Drachbar

23 with 43?

24 A. Um-hum.

25 Q. If you add up the last two columns next to his

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123 1 name, 35 and 8, that equals 43?

2 A. Okay. I see what you're doing.

3 Q. Does this refresh your recollection as to  
whether

4 or not this was the chart you were given and  
you

5 referenced in your report?

6 A. Obviously the numbers seem to match what's in  
my

7 report. And I know I saw some type of a  
report

8 like this. Whether this is the same exact one,  
I

9 don't know for sure.

10 Q. And at least according to this report, Mr.

11 Drachbar has only one less case than Ms.  
Varner,

12 correct, he has 43, Ms. Varner has 44?

13 A. He has 43, Ms. Varner has 45.

14 Q. Okay, 45, I'm sorry.

15 A. Yes.

16 Q. And Hank Thielemann has 40 cases?

17 A. Yes.

18 Q. And Ms. Green who complained that Ms. Varner  
and

19 she and other people were disfavored actually  
got

20 more cases, she only has 31 cases. Correct?

21 A. Um-hum.

22 Q. Would this document refute or undercut Ms.  
Green's

23 contention that the one element to prove that

24 there was discrimination was that the case

loads

25 were higher for her and other people and the

older

Exam./MacMain - DeLuce

124 1 males had lower case loads?

2 A. I think you need to ask her that. I see Mr.  
3 Osenkarski's memo and he said when assignments  
4 were made it is not simply a numbers game.

Other

5 factors such as complexity of cases and current  
6 individual PO's daily activities are taken  
into

7 consideration. So, I don't know if it  
refutes

8 what she said. I do know that shear numbers  
alone

9 are not the only answer.

10 Q. But Ms. Green in the paragraph you recite she  
11 believes that Barb and Nick Baralett have  
the

12 highest case loads because Gary wants to  
make a

13 point with them, that would not be reflected  
in

14 this document, would it, that they did not  
have

15 the highest -- well, Ms. Varner had the  
highest

16 case load by a case or two?

17 A. She had the highest case load, that was  
clear.

18 She felt whatever it says there. Obviously  
the

19 numbers panned it out differently and I  
reflected

20 that accurately in the report.

21 Q. Did that have any effect on your credibility of  
22 placing what Ms. Green had told you?

23 A. Well, it didn't have a significant impact, no,  
24 because the concern I had was that Barbara  
Varner

25 had the most cases and some of the other things



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125 1                   that Deb Green relayed my -- well,  
                  whatever my

2                   report says Deb Green said says. I don't want  
to

3                   restate that because it's six and a half years.

4    Q.            Sure.

5    A.            I mean there's no question what I wrote in my  
6                   notes is what she said to me. You are saying,  
7                   hey, the numbers don't pan out. I'll let you  
ask

8                   her that.

9    Q.            If you turn to Page 20 and, again, we're on  
DeLuce

10                  2, this reflects an interview with a Kerry  
Howser.

11                  She clearly does not like Osenkarski and  
Graham.

12                  I want to go through a couple of the examples  
Ms.

13                  Howser gave to support her belief that there  
was

14                  mistreatment or differential treatment. She  
first

15                  tells you that DUI instructors got \$20,000  
extra.

16 Is that correct?

17 A. That's what I put in the report.

18 Q. But then the actual amounts are actually one  
19 quarter or one half of that. Correct?

20 A. That's what we asked, what do they make, and I  
21 wanted to correctly reflect that.

22 Q. Based on looking at the numbers, did that have  
23 an  
24 impact on your assessment of Ms. Howser's  
credibility?

25 A. No, because I don't think they, the individual

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126 1 employees knew how much was made by  
the DUI

2 instructors. I think they thought it was a lot  
3 more money than it actually was. The bigger  
4 concern was that a lot of these employees  
didn't

5 get a crack at this additional income. And  
that

6 was the issue is how were people selected to  
get

7 this opportunity. And I don't think I came to  
any

8 significant conclusions, but I tried to bear  
out

9 the facts to address the situation.

10 Q. And the facts were that Ms. Howser's perception  
11 was incorrect?

12 A. I think her perception of the amount was  
13 incorrect. Her concern as to why certain  
people

14 got it and why certain people didn't was an  
issue

15 that needed further investigation.

16 Q. Was that something that you investigated?

17 A. I asked questions about it.

18 Q. And did you do any further investigation beyond  
19 asking questions?

20 A. No.

21 Q. In other words, did you look at documents?

22 A. No. Well, somebody looked at documents because  
23 they got us the actual amounts they made. I  
24 believe Mr. Hartnett looked into that.

25 Q. And the actual amounts were one quarter or one

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127 1 half of what Ms. Howser believed  
them to be?

2 MS. WALLET: I'll raise an objection.

Asked

3 and answered.

4 BY MR. MacMAIN:

5 Q. Is that correct, the numbers reflect one  
quarter

6 or one half of what Ms. Howser's perception  
was?

7 A. Based on the math, yes.

8 Q. Turning to Page 21, looking at the last  
paragraph,

9 and Ms. Howser likewise cites as an example of  
10 unfair treatment that Mr. Thielemann's case  
load

11 is very low. I'm looking at the third line  
from

12 the bottom. Do you see where I am?

13 A. Um-hum.

14 Q. If we turn back to DeLuce 5, which is the case  
15 load assignment, Mr. Thielemann, in fact, has  
one

16 of the highest case loads. If my math is  
correct,

17           he has 40 cases?

18    A.     I think I explained that these notes are these

--

19           this report contains my summary of what the

20           witnesses told me.

21    Q.     Sure.

22    A.     It's not -- I didn't make findings of fact that

a

23           court would do.

24    Q.     Sure. All I'm simply asking is what you were

told

25           by a witness when you looked at the numbers, in

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128 1 fact, were inaccurate, the witness's  
either

2 perception was inaccurate -- I mean you can't  
3 comment on their state of mind, but what the  
4 numbers bear out and what they told you are two  
5 different things. Correct?

6 A. Yeah, in certain cases.

7 MR. MacMAIN: Does anyone else have any  
other

8 questions? I think I have a few select  
questions

9 from your notes, but I don't want you to have  
to

10 sit here for three minutes.

11 (Discussion held off the record)

12 BY MR. MacMAIN:

13 Q. Mr. DeLuce, let me ask you this. One of the  
other

14 things that you were told and I think is  
reflected

15 in your notes and in your report is that the  
16 department had split a short time before all of  
17 this occurred. Correct?

18 A. Yes.

19 Q. And was it your understanding that there was

some

20 unhappiness generally because of the split?

21 A. I think whatever my report says, my

recollection

22 is that some were probably happy and some were

23 probably unhappy, but I think I explained

that

24 some people did not want to work for

certain

25 people and went to great lengths to get away

from



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129 1                                   them.

2     Q.     DeLuce 1, which are your notes, looking on Page  
14

3             of the 37, and this is notes from your  
interview

4             with Mark Galbreath?

5     A.     Yes.

6     Q.     Five lines down you note that "worked closely  
with

7             Barb Varner." That reflects I assume that Mr.

8             Galbreath worked closely with Barb Varner?

9     A.     If that's what I wrote, I must have gotten that  
10            indication.

11    Q.     Did Mr. Galbreath indicate that Ms. Varner ever  
12            complained to him about Mr. Graham's conduct?

13    A.     You are asking me if Mark Galbreath told me  
that

14            Barb Varner ever complained to Mark Galbreath  
15            about Gary Graham's conduct?

16    Q.     Correct.

17    A.     And I will answer that by saying if I state it  
in

18            this summary, my answer is yes. If it's not in  
19            there, my answer is no.

20    Q.     Fair enough.

21 A. I can't remember what Mark Galbreath told me  
22 six

23 and a half years ago.

24 Q. I'll represent to you there's no indication in  
25 your notes that he stated that Ms. Varner  
complained to him at any point about Mr.

Graham.

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130 1                    So, what you're telling me, if it's  
not in there,

2                    he didn't tell you that.

3                    If you turn to Page 30 of the same  
document,

4                    30 of 37, and looking at the very top of the  
page

5                    there's two names written, Fran Rose and Winnie  
6                    Stern?

7    A.            Um-hum.

8    Q.            These were names provided to you by the person  
you

9                    were interviewing, would that be fair?

10   A.            I don't know. I presume Kerry Howser gave me  
11                    these names because this seems to be part of  
the

12                    Kerry Howser interview.

13   Q.            And did you ever interview Fran Rose or Winnie  
14                    Stern?

15   A.            I have no recollection of interviewing those  
two

16                    individuals.

17   Q.            Did you ever interview Tom Boyer?

18   A.            My recollection is that we did. Because,  
again, I

19 know Tom because I believe Tom handled DUIs  
and,

20 therefore, I had some DUI cases. But are you  
21 telling me I have no notes in here from Tom  
Boyer?

22 Q. I did not see any.

23 A. Well, I -- I'm not going to speculate. You're  
24 asking me did we ever interview Tom Boyer? I  
25 can't recall specifically.

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131 1 Q. I don't want to ask a question  
that's already been

2 asked, but if you would have interviewed Mr.  
3 Boyer, there would be notes reflected in this  
4 package of materials. Would that be fair?

5 A. Fair statement is there should be. Okay? I  
6 turned the entire -- I believe if I interviewed  
7 him and took notes, they exist. And maybe  
because

8 I knew Tom I thought that I had. I can't  
explain  
9 the difference.

10 Q. If you turn to Page 21 of 24, same document you  
11 have in front of you.

12 A. Okay.

13 Q. This is Page 2 of your interview with John  
Roller?

14 A. Yes.

15 Q. Very last line says GG - "Attila the Hun",  
16 different managerial style, can get the work  
done.

17 This came from Mr. Roller obviously. Do you  
18 recall anymore specifically what he told  
you?

19 A. He told me that Mr. Graham's nickname in

the

20 courthouse was the Attila the Hun, but he

has a

21 different managerial style and he can get

work

22 done. He said though, as I recall, it was not

his

23 style.

24 Q. What was not his style?

25 A. Mr. Graham's style.

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132 1 Q. Was the not the same as Mr. Roller's  
style?

2 A. Yes.

3 Q. The reference about can get the work done would  
4 indicate that Mr. Graham was able to  
effectively

5 complete jobs and get the work done?

6 A. I think that was Mr. Roller's opinion.

7 Q. Just in a different style than what Mr. Roller  
8 would do?

9 A. I think you need to ask him that, but that -- I  
10 think you need to ask him that.

11 MR. MacMAIN: That's all of the questions  
I

12 have. Thank you.

13 EXAMINATION

14 BY MR. ADAMS:

15 Q. Mr. DeLuce, you testified at some point today  
that

16 when you were interviewing witnesses for your  
17 report that you took complaints from Ms.

Varner

18 and you used them as input to ask questions  
to

19 witnesses. Do you recall that?

20 A. Yes.

21 Q. Can you give me an example of that by  
chance?

22 A. I think if you look at my notes of my meeting  
with

23 Barbara Varner, which is contained in this

24 packet--

25 Q. Are you referring to your handwritten notes?



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133 1 A. Yes.

2 Q. The one set of them?

3 A. Yes.

4 Q. Let me raise the question, did you ask the  
5 witnesses that Ms. Varner provided to you what  
6 they observed or did you ask them specifics

based

7 on what Ms. Varner told you?

8 A. I think it was twofold. I think we asked them  
9 specifically about specific incidents that

Ms.

10 Varner told us and then we would ask them  
some

11 general terms about what they observed  
regarding

12 the attitude, behavior in the office  
environment

13 towards other employees, whether they be males  
or

14 females.

15 Q. In terms of the sexual harassment that Ms.  
Varner

16 was alleging, did you ask witnesses that she  
17 provided specific questions in that area, for  
18 example, did you see Ms. Varner subjected to

blank

19 in the sexual harassment area?

20 A. I can't recall exact questions that were asked.

I

21 tried to reflect in my notes the answers that

were

22 given.

23 Q. Not to belabor this any longer, can you look at

24 Page 9 on Deposition I guess it's Number 2?

25 MR. THOMAS: The typewritten report.

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134 1 MR. ADAMS: Right.

2 BY MR. ADAMS:

3 Q. This is an example. I don't want to go through

4 all of this, but I just want to ask you one

for

5 example. The last paragraph -- well, the

first

6 real paragraph, the paragraph at the bottom

starts

7 with Varner. It says: "Varner states that

Graham

8 frequently screams at her while she is at her

desk

9 and in her office, or uses foul language

10 describing her working abilities in the general

11 office area."

12 If you go down a couple of lines, he also

13 indicates that the ranting and raving and

putting

14 her down was confirmed by Deborah Green, and

I'm

15 not reading the complete sentence, but would

that

16 be an example of when you talked to Deborah

Green

17           that you asked Deborah Green did she see Mr.  
18           Graham do these things, blah, blah, blah, based  
19           on  
20           what Varner described?

21       A.     Yes, that's what we would do. And the ranting  
22           and  
23           raving comments were I'm certain relayed to me  
24           by  
25           Barbara Varner and then we asked witnesses if  
             they  
             witnessed that and what they saw towards her  
             and  
             others. I'm reasonably certain that was the  
             context of the type of questioning.

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135 1 Q. Okay, thank you, sir. Did you ever  
discover facts

2 by talking to any of the witnesses that Ms.  
Varner

3 complained to Joe Osenkowski regarding the  
sexual

4 harassment by Gary Graham?

5 A. Did I ever discover facts that Ms. Varner  
6 complained to Joe Osenkowski regarding the  
actions

7 by Gary Graham?

8 Q. Or the sexual harassment allegations by Gary  
9 Graham.

10 A. I think there is some reference in here. I  
don't

11 want to speculate, but I thought there was some  
12 reference in here that Mrs. Varner indicated  
that

13 she said something to Joe about it and got  
14 nowhere, but -- well, I don't want to  
speculate.

15 If I say it in here, she told me; if I didn't  
say

16 it in here, she didn't tell me.

17 Q. Okay.

18 A. I hate to go beyond the four corners of this  
19 document since it's six and a half years ago.

20 Q. I'll submit to you that I haven't seen it, but  
you

21 have no evidence to the contrary, do you, off  
the

22 top of your head?

23 MR. THOMAS: Let me make an observation  
for

24 the record. I'm not sure that the answer was  
25 responsive to the question. I thought your

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136 1 question was did anybody else  
confirm that Varner

2 complained to Osenkarski and I think the  
witness

3 responded by noting that Varner complained to  
4 Osenkarski.

5 A. I misinterpreted the question. I think the  
answer

6 is no to your question.

7 BY MR. ADAMS:

8 Q. That no other person--

9 A. --confirmed that they heard Barbara Varner  
10 complain about Gary Graham to Joe Osenkarski.

11 Q. Is that the same in terms of anyone coming  
forth

12 and claiming that Ms. Varner complained to  
Mr.

13 Osenkarski about different treatment for  
women

14 versus men in the office?

15 A. I'm sorry, you're asking me if anyone else  
16 complained about different treatment towards  
women

17 in the office?

18 Q. Or confirmed Ms. Varner's allegations that Mr.

19           Osenkarski was notified of such or complained  
20           to

21           Mr. Osenkarski about such things?

22    A.       No one told me that anyone else complained to  
23           Mr.

24           Osenkarski about the treatment of women in the  
25           office.

26    Q.       Did anyone tell you that Ms. Varner complained  
27           to

28           Mr. Osenkarski about the seniority system and  
29           how



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137 1                                   it affected her in the office?

2     A.     I can't recall that. I know that Ms. Varner  
3             complained about it. Whether someone else did,

I

4             can't recall.

5     Q.     If you could turn to Page 22, the first  
paragraph

6             there which if you go from the bottom of the

7             paragraph up, if you look in the left-hand  
column

8             side the sentence that starts with Osenkarski,  
do

9             you see that?

10    A.     Yes.

11    Q.     It reads Osenkarski can only remember Barb  
coming

12             to him once to discuss a case and that was when

13             her and Gary disagreed, and you have in

14             parentheses, the Trinity basketball

player, I

15             guess in regard to a case involving a  
trendy

16             basketball player. Is that correct?

17    A.     That's correct.

18    Q.     Did Gary Graham confirm this example of Ms.

Varner

19           going to Mr. Osenkowski and complain only of  
this

20           particular case versus something else?

21           MS. WALLET: Objection. That's clearly a  
22           compound question.

23    A.     I'm sorry, what are you asking?

24    BY MR. ADAMS:

25    Q.     Let me rephrase the question. Did you discover

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138 1 any evidence to the contrary that

Ms. Varner went

2 to Mr. Osenkowski to complain about anything  
else

3 with regard to Gary Graham other than this  
4 particular case involving the trendy basketball  
5 player?

6 A. I can't recall. If I have it in my notes or  
it's

7 in this report, she did.

8 Q. Okay.

9 A. If I don't, I can't recall any other additional  
10 complaints.

11 Q. Did you, in fact, take into consideration that  
you

12 didn't have any evidence other than what Ms.  
13 Varner shared with you that any notice or  
14 complaints were given to Mr. Osenkowski with  
15 regarding her treatment in your recommendation  
16 that you finally gave to the commissioners and  
Mr.

17 Hartnett?

18 A. Could you repeat the question?

19 (Question from Page 138, Lines 11 through  
17,

20 read by the Reporter)

21 A. I'm sorry, I don't understand the question.

22 BY MR. ADAMS:

23 Q. I think you testified that you gave some

24 recommendations about Gary Graham and Mr.

25 Osenkarski to the commissioners, and I can't

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139 1 remember who else was involved, but  
certainly

2 commissioners heard your recommendations as  
to

3 what you thought should be done with regards  
to

4 the office of juvenile probation. Is that  
5 correct?

6 MR. THOMAS: Objection to form. I think  
it

7 mischaracterizes his earlier testimony, but  
you

8 may answer it.

9 A. I had a meeting with the commissioners, John  
Ward,

10 Dan Hartnett, Horace Johnson, where I verbally  
as

11 well as Mr. Hartnett gave information regarding  
12 our investigation and then I gave the

13 commissioners options that could be considered  
and

14 some thoughts and recommendations in my mind  
that

15 I thought would help resolve the complaint and  
16 improve the department and the employment

issues,

17 management issues that were going on.

18 BY MR. ADAMS:

19 Q. Did you take into consideration when you made  
that

20 recommendation that other than what Ms. Varner

21 shared with you there was no other evidence

that

22 indicated that she complained to Mr. Osenkowski

23 about her seniority issue, sexual harassment or

24 anything else?

25 A. My recollection is that she complained to Mr.

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140 1 Osenkarski about a couple of issues.

My

2 recollection is she was dissatisfied with the  
3 response or lack of response or the fact that a  
4 decision had to be made by the president judge

and

5 none were forthcoming.

6 Q. Can you turn to Page 6 of Deposition 2, under  
7 facts there, that paragraph, I don't know,

maybe

8 four lines down it reads: "I also spoke with  
9 senior probation officer, Kerry Howser, who in  
10 1993 filed a complaint of sexual harassment  
based

11 on a comment made about her by Mr.  
Osenkarski."

12 You also indicate that it says: "He was  
13 reprimanded informally and required to  
apologize

14 to her and engage in some type of sensitivity  
15 training." Did you write that?

16 A. I wrote that.

17 Q. Did you also in your investigation learn that  
that

18 particular allegation of sexual harassment was

19 unfounded?

20 A. I don't recall that. I got to believe -- well,  
21 strike that. Leave it at that. I don't recall  
22 that.

23 Q. Can you turn over to Page 7? That first real  
24 paragraph there discusses the seniority system  
and

25 Ms. Varner's complaint about it, would you  
agree?



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141 1 Please take your time to look at the  
paragraph so

2 I can ask you a question or two.

3 A. This is the seniority list.

4 Q. Okay.

5 A. Yes.

6 Q. And I think you testified that Ms. Varner  
7 complained that she felt that the seniority in  
the

8 system was unfair. Is that correct?

9 A. I think she felt it was discriminatory.

10 Q. Did she share with you that prior to the  
11 implementation of the seniority policy that she  
12 thought changing it from applying full county  
time

13 to priority time of probation officers being  
more

14 paramount, she actually thought that was fair  
15 before it actually was applied. Did she share  
16 that with you?

17 A. I don't recall. I'm sorry, did she share what  
18 with me? That she felt that her time in

Children

19 and Youth should be included in determining  
20 seniority?

21 Q. No. Did she share with you that prior to the  
22 seniority list being implemented which led to  
her  
23 losing ground by one notch that she thought  
that  
24 the change was a fair one for everyone, did she  
25 share that with you?

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142 1 A. I have no recollection of that.

2 Q. What is your opinion of the environment in the  
3 juvenile probation department when you were  
4 investigating this, did you have an opinion of  
it  
5 at all as a whole?

6 MR. THOMAS: Objection to the form.

7 MR. ADAMS: That's okay.

8 MR. THOMAS: Well--

9 MR. ADAMS: I'll rephrase it.

10 MR. THOMAS: Okay.

11 BY MR. ADAMS:

12 Q. Mr. DeLuce, did you ever receive any  
information

13 that led you to believe that the environment in  
14 the juvenile probation department was one of  
light

15 humor, jokes in the office?

16 A. I did not get that feeling from some of the  
17 employees and yet from other employees I think  
it

18 was a comfortable environment for them. For  
some

19 I felt it was an uncomfortable environment.

20 Q. Would the information received on both sides,

21 would that include from women and men the same  
22 opinions?

23 A. I think initially I felt from what the  
witnesses

24 said that the women felt they were treated  
25 differently. As we went through talking to  
more

Exam./Adams - DeLuce

143 1 people, they confirmed that they  
felt some of the

2 women were treated differently but some of the  
men

3 were too. I think that's why my  
recommendations

4 were changing somewhat from a harassment issue  
to

5 include an issue regarding management.

6 Q. Would those thoughts that you gravitated to  
7 include the language that was shared in the  
office

8 among employees, men and women?

9 MS. WALLET: Objection to the form of the  
10 question.

11 A. I think it was clear that some of the employees  
12 were uncomfortable with the language and some  
of

13 them probably were not.

14 BY MR. ADAMS:

15 Q. Would that include women and men? Strike that,  
if

16 I can strike it.

17 A. Certainly some of the women--

18 MR. THOMAS: There's no question.

19 A. Okay.

20 BY MR. ADAMS:

21 Q. One last set of questions, Mr. DeLuce. You

22 testified that you were with the

understanding

23 that it was the president judge who made

the

24 ultimate decision with regard to Mr. Graham and

25 Mr. Osenkarski. Is that correct?

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144 1 A. That's correct.

2 Q. And you were aware that the president judge  
3 actually received a copy of your report, that  
4 being the confidential attorney impressions  
5 report?

6 A. I am not personally aware that he received it.

I

7 don't know for sure what the president judge  
8 received. I have seen in Judge Kane's I think  
9 opinion reference to the fact that it was  
10 disclosed to the president judge. I didn't  
11 deliver it to him. I didn't sit down with the  
12 report and discuss it with him.

13 Q. But you are aware that the president judge  
decided

14 not to terminate Mr. Osenkowski's employment as  
a

15 result of Ms. Varner's complaints--

16 A. Oh, yes.

17 Q. --and the investigation. Is that correct?

18 A. I'm aware that he decided not to take --

my

19 recollection is he decided not to take

any

20 employment action against Mr. Osenkowski. I'm

not

21           aware of any being taken. If there is, I  
didn't

22           see it.

23           MR. ADAMS: That's my last two questions.

24           Thank you.

25    A.     We're done?



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145 1 MS. WILLIAMS: I have no questions for  
you,

2 Mr. DeLuce.

3 (The deposition concluded at 3:55 p.m.)

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COMMONWEALTH OF PENNSYLVANIA )

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COUNTY OF CUMBERLAND )

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I, Ann M. Wetmore, Reporter and Notary

in and for the Commonwealth of Pennsylvania and  
County of Cumberland, do hereby certify that

5

the

foregoing deposition was taken before me at the  
time and place hereinbefore set forth, and that

6

it

is the testimony of:

7

8

DAVID W. DeLUCE

9

me 10

truth

I further certify that said witness was by  
duly sworn to testify the whole and complete

was 11

subsequently

in said cause; that the testimony then given  
reported by me stenographically, and

transcribed under my direction and supervision;  
and that the foregoing is a full, true and

correct

transcript of my original shorthand notes.

13

14

for

I further certify that I am not counsel

or related to any of the parties to the  
foregoing 15 cause, or employed by them or their  
attorneys, and

am not interested in the subject matter or  
outcome 16 thereof.

17

18

Dated at Mechanicsburg, Pennsylvania, this  
27th day of October, 2003.

19

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Ann M. Wetmore  
Reporter - Notary

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